



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No: 1788-21
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX-XX-██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
(c) PDUSD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016
(d) PDUSD memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to reflect an honorable or general (under honorable conditions) characterization of service.

2. The Board, consisting of ██████████ ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 18 August 2021 and pursuant to its regulations determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered the advisory opinion (AO) furnished by a qualified mental health provider.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. Petitioner enlisted and entered a period of active duty in the Marine Corps on 18 April 1967 at the age of 17 years and two months.¹ He served as an artillery batteryman with the military occupation specialty code of 0811.

d. On 3 November 1967 Petitioner received nonjudicial punishment (NJP) for a one day period of unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ).

e. On 21 December 1967 Petitioner was convicted by summary court-martial (SCM) of a 15 day period of UA in violation of Article 86, UCMJ.

f. Petitioner participated in multiple counterinsurgency operations in the Republic of Vietnam from approximately 17 February 1968 to 1 December 1968. Petitioner's service history is significant for having been awarded the Vietnamese Service Medal with one star, Vietnamese Campaign Medal, and the Vietnam Meritorious Unit Commendation Cross of Gallantry with gold frame and palm.

g. Petitioner received a second NJP on 7 March 1969 for a 23 day period of UA in violation of Article 86, UCMJ.

h. Petitioner entered another period of UA from 10 April 1969 to 24 September 1969, terminated by apprehension.

i. Petitioner requested a psychiatric consultation while confined in the brig and was referred for a psychiatric evaluation on 4 November 1969.² The evaluation stated Petitioner requested the consultation because "feelings have been bottling up inside himself and he doesn't want to explode and hurt somebody else." Petitioner's evaluation resulted in "no psychiatric diagnosis;" however, his mental health provider stated, "[o]n the other hand, this is by no means to say that this man is without legitimate emotional feelings which need to be talked about and expressed in non-destructive ways."³

¹ Petitioner's date of birth is [REDACTED]

² Petitioner's psychiatric evaluation report indicates he had been in the brig for 40 days when he requested the consultation. Petitioner was presumably in pretrial confinement due to his recent UA, apprehension, and SPCM referral.

³ Petitioner's mental health provider made the following recommendations: Rec: 1) consciously relax the frontalis (muscle that elevates the eyebrows), the temporalis (muscle at the side of the head that opens mouth), and the

j. On 7 November 1969 Petitioner was convicted by special court martial (SPCM) of a 167 day period of UA in violation of Article 86, UCMJ. He was sentenced to be confined at hard labor for four months, to forfeit \$40.00 per month for four months, to be reduced to pay grade E-1, and to be discharged with a bad conduct discharge (BCD).

k. The Navy Court of Military Review affirmed the findings and sentence on 30 March 1970.

l. Petitioner was discharged on 31 March 1971 under conditions other than honorable, equating to a BCD.⁴

m. The Naval Discharge and Review Board denied Petitioner's application for an upgraded characterization of service on 7 April 1976. Petitioner cited his performance in Vietnam as the basis to request relief.

n. On 31 October 2006 Petitioner's request to Headquarter Marine Corps to have his medals replaced was denied based on policy prohibiting replacement of medals due to his adverse characterization of service.

o. Petitioner contends that he was exposed to heavy combat and dangerous carcinogens while serving in Vietnam and now suffers from Depression, Anxiety, PTSD symptoms, and lung cancer. He states he fears he will die soon and requests relief that more appropriately describes the nature of his tour of duty so that he and his family can reflect on his service proudly.

p. In support of his application, Petitioner provided post-service medical records documenting diagnoses and active treatment for PTSD (combat related from Vietnam), Major Depression, Panic Disorder, and Other Specified Anxiety Disorder.

q. Petitioner noted his post-service accomplishments in his personal statement. He asserts he has been married for 50 years, has two sons (one of whom has mental health issues which Petitioner believes is related to his exposure to Agent Orange during deployment), spent his life working for the Teamsters in a warehouse and did all types of work from yard work to driving trucks, and retired at age 61 (he is now 71).

r. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 26 July 2021. The AO noted that in Petitioner's legal brief and personal statement, he provided a credible account of chronic psychological distress at experiencing the deaths of a close Marine buddy, many Marine friends, a cousin, with another friend captured and unaccounted for as a POW, and another close friend losing both legs. Petitioner reported near constant direct and indirect fire while assigned to forward operating bases, to include sniper fire, which constantly made him fear for his life. The

muscles in the back of the neck, 2) discuss experiences and feelings with people, 3) avoid accidents which would get him into further difficulty."

⁴ Petitioner's characterization is a BCD. He was issued a DD 259 MC which at the time, characterized a BCD as under conditions other than honorable.

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AO concluded that Petitioner provided a credible and convincing account of combat stressors and losses with post-deployment psychological symptoms and behavioral changes consistent with PTSD. Consequently, the AO concluded that the preponderance of indirect evidence indicated Petitioner incurred a mental health condition (PTSD) as a result of his military service, and his in-service misconduct could be partially attributed to his experience of combat and PTSD.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes that as a grant of clemency, Petitioner's request warrants full relief and his characterization of service should be corrected to reflect honorable.

The Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition at the time of discharge. The Board found a nexus between Petitioner's condition and the misconduct that occurred prior to his deployment to Vietnam, and further found that the condition mitigated the discharge. In its deliberations, the Board acknowledged that Petitioner was in a UA status for a collective 16 days prior to his deployment to Vietnam; however also took under consideration that Petitioner volunteered to extend his Vietnam deployment by 6 months at the end of his tour but was injured and medically evacuated to the United States. Although the Board does not condone Petitioner's misconduct, it was relegated to periods of UA, non-violent in nature, and seemingly related to his inability to cope with his deployment experiences and difficulties in adjusting to garrison.

In addition to applying liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his conduct, the Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, that Petitioner suffered from undiagnosed and untreated PTSD during his naval service which mitigated the majority of misconduct for which he was separated; Petitioner's credible personal statement describing his symptoms and assertion that he has sought and received mental health treatment from his civilian provider to rehabilitate himself; volunteered to serve in the Marines at the age of 17; Petitioner's service in Vietnam; relative youth and immaturity at the time of his misconduct; and the passage of time of over 50 years since Petitioner's discharge.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable," that his separation reason and authority was "21L - Convenience of the Government – Separation for other good and sufficient reasons when published by the Secretary of the Navy. Par 6012.1f MARCORSEPMAN" and that his reenlistment code was "RE-1A."

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That Petitioner be issued an Honorable Discharge Certificate.

That Military Awards Branch (MMA) complete a full awards verification and add any additional entitled awards to Petitioner's DD Form 214.

That no further corrective action should be taken.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/24/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]