



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

█
Docket No: 2122-21
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) ExDir, BCNR ltr WDP/TGN/hms of 22 Aug 80
(c) USD 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 w/enclosures
(2) NAVMC 118 (5) Record of Promotion, Reduction, Examination for Promotion
(3) Noncommissioned Officer Fitness Report for the reporting period 15 Mar 67 to 7 Jul 67
(4) NAVMC 118 (12) Offenses and Punishments
(5) Noncommissioned Officer Fitness Report for the reporting period 8 Jul 67 to 11 Oct 67

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 by removing or modifying his Noncommissioned Officer (NCO) Fitness Report for the reporting period 8 July 1967 to 11 October 1967.

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 10 June 2021, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of the naval records, and applicable statutes, regulations, and policies.

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. Petitioner enlisted in the Marine Corps on 9 August 1960, and honorably served on active duty until 7 August 1964, when he was transferred to the Inactive Reserve in the grade of corporal/E-4. On 10 March 1966 he reenlisted in the grade of lance corporal/E-3, and specifically requested to the Commandant of the Marine Corps that he receive orders to serve in Vietnam.

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c. Petitioner was promoted to corporal on 1 October 1966, and to sergeant/E-5 on 15 March 1967. Enclosure (2).

d. Petitioner was issued enclosure (3), a Change of Reporting Senior NCO Fitness Report for the reporting period 15 March 1967 to 7 July 1967, while serving as an artillery scout observer in the grade of sergeant.

e. On 12 October 1967, Petitioner received Battalion Commander's NJP for violation of the Uniform Code of Military Justice, Article 92 (dereliction of duty). Specifically, he failed to check sights on a 105 mm howitzer, causing it to fire 1000 milliradians¹ out. Petitioner's punishment was a reduction in grade to corporal. He appealed the NJP, and his appeal was reviewed by a qualified lawyer in accordance with the provision of Article 15(E) UCMJ by a Third Marine Division staff legal officer. His appeal was denied on 29 November 1967. Enclosure (4).

In a 5 March 1979 letter to the Commandant of the Marine Corps (CMC), Petitioner described the circumstances that led to his NJP. He noted that the punishment was unjust because during the reporting period of the contested report, he was "made Section Chief of a 105 mm Howitzer gun crew" despite advising his Battery Commander that he "had not been near a howitzer for at least four years and therefore was totally unfamiliar with the procedures and various duties required of a Section Chief." He also noted that on one occasion, he failed to check the deflection put on the gun by his gunner, which caused the gun to fire out 500 mills into enemy territory.

Petitioner pled to the CMC to have the NJP cancelled, noting that "for nineteen months I committed my body and soul towards something I believed in and towards the performance of an artillery forward observer only to be rewarded by reducing me in rank because of my [unfamiliarity] concerning the duties of a Section Chief on a Howitzer gun. This appointment came about due to a shortage of personnel in our Battery."

f. Petitioner's NJP was documented in enclosure (5), the contested NCO Fitness Report for the reporting period 8 July 1967 to 11 October 1967, during which he served as an artillery scout observer and as a section chief, in the grade of sergeant. The Section D comments include "[Petitioner's] performance of duty as an Artillery Scout Observer was excellent. He led his own FO team, performing in a lieutenant's billet, very competently" and "He was reduced to Corporal for not checking the deflection² placed on his gun by a PFC cannoneer, allowing the gun to fire at the wrong deflection thereby not performing his duties as a section chief." Petitioner contends that his Reporting Senior (RS) had neither daily contact with him, nor close observation of his work, as annotated on the report. Petitioner also contends that Section C

¹ A milliradian is a unit of measurement used for angular measurement which is defined as a thousandth of a radian (0.001 radian). Milliradians are used in adjustment of firearm sights by adjusting the angle of the sight compared to the barrel (up, down, left, or right).

² Deflection of the gun was set by aligning two aiming stakes with red and white stripes (like a barber pole) to a viewer looking through a small, periscope-like device

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attribute marks were unfairly lowered, although his RS did not have sufficient observation of him. A thorough search for the contested NCO Fitness Report, furnished by the Petitioner, revealed that the report is not in his official military personnel file (OMPF).

g. In 1980, the Board considered Petitioner's request to remove his 12 October 1967 NJP and his implicit request to remove the contested NCO Fitness Report. The Board concluded that there was no legal basis to grant Petitioner's request for cancellation of his NJP and reinstatement to the grade of sergeant. Reference (b).

h. Circa early 1979, Petitioner was awarded the Bronze Star Medal for his heroic achievement in action on 7 June 1967 as an artillery forward observer with his unit in Vietnam.

i. Reference (c) provides standards for the Board in determining whether relief is warranted on the basis of equity, injustice, or clemency.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board noted that the gravamen of Petitioner's ongoing appeal is that he unjustly received NJP, and that the NJP is documented in his contested NCO Fitness Report, which is in error and unjust due to insufficient observation, as well as low markings and adverse comments due to his 12 October 1967 NJP. The Board determined that removal or modification of the contested report is not warranted under the authority of reference (b), because the contested NCO Fitness Report is not in Petitioner's service record.

While the Board noted there was no apparent administrative or procedural error in issuing the NJP, the Board reconsidered Petitioner's request to remove his 12 October 1967 NJP in light of reference (c). In reaching its decision, the Board noted that Petitioner voluntarily reenlisted and actively sought out orders to Vietnam, an honorable and courageous gesture at that time. While in Vietnam, Petitioner participated in numerous combat operations, he was wounded in action and received a Purple Heart Medal, and was awarded a Bronze Star Medal for heroic achievement in action. The Board also noted that Petitioner, then a sergeant, filled a lieutenant's billet. Additionally, due to a purport shortage of 0811 NCO's, Petitioner was assigned to the billet of Gun Section Chief, which ultimately resulted in the incident that led to his NJP, and was most likely due to his unfamiliarity with the weapon and his responsibilities in that billet.

In view of the foregoing, the Board concluded Petitioner's 12 October 1967 NJP, and any other residual reference to said NJP, shall be expunged from his OMPF on the basis of equity and as a matter of clemency. The Board also concluded that his record shall reflect a restored grade of sergeant.

RECOMMENDATION

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

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Petitioner's naval record be corrected by expunging his 12 October 1967 NJP, and any other residual reference to said NJP.

Petitioner's naval record be corrected by restoring his permanent grade of sergeant with a date-of-rank and effective date of 15 March 1967.

Petitioner's naval record be corrected by issuing a Certificate of Release or Discharge from Active Duty (DD Form 214) to reflect his discharge on 8 March 1968 in the grade of sergeant/E-5, with a date-of-rank of 15 March 1967. The DD Form 214 shall also reflect his Bronze Star Medal.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

The Defense Finance and Accounting Service (DFAS) complete an audit of Petitioner's records and make payment of any money that Petitioner may be entitled to.

Upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 6 April 2021.

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.

7/15/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]