



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

██████████
Docket No: 3120-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
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 Post Traumatic Stress Disorder," 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," 24 February 2016
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and 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," 25 August 2017
(e) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with enclosures
(2) DD Form 214
(3) NAVMC 118(9), Combat History-Expeditions-Awards Record
(4) NAVMC 118(12), Offenses and Punishments
(5) ██████████ Memo 7/HWT/rlm 1913, subj: Early release for college enrollment, 30 October 1968
(6) ██████████ ██████████ Special Court-Martial Order Number 2-69, 14 February 1969
(7) ██████████ ██████████ Special Court-Martial Order Number 2B-69, 13 March 1969
(8) NAVMC 118(11), Administrative Remarks
(9) BCNR Advisory Opinion, 17 August 2021

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 characterization of service be upgraded to honorable, and that his rank be upgraded to E-4.

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2. The Board reviewed Petitioner's allegations of error or injustice on 30 August 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) – (e).

3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or 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 waive the statute of limitations and review Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 10 March 1966. See enclosure (2).

d. Petitioner served in the ██████████, Republic of Vietnam, from 4 September 1966 to 7 October 1967. See enclosure (3).

e. On 3 January 1968, Petitioner received non-judicial punishment (NJP) for an unauthorized absence (UA) from 28-29 December 1967, in violation of Article 86, Uniform Code of Military Justice (UCMJ). See enclosure (4).

f. On 27 May 1968, Petitioner received his second NJP for a UA from 20-23 May 1968, in violation of Article 86, UCMJ. See enclosure (4).

g. On 28 October 1968, Petitioner requested an early release from his enlistment to enroll in college. His request was approved on 30 October 1968, with a release date of 21 January 1969. See enclosure (5).

h. On 2 December 1968, Petitioner again entered into a UA status, and remained absent until 20 January 1969. See enclosure (4).

i. On 11 February 1969, Petitioner was convicted by a special court-martial (SPCM) of UA from 2 December 1968 to 20 January 1969, in violation of Article 86, UCMJ. He was sentenced to three months of confinement, forfeiture of pay, and reduction to E-1. See enclosure (6).

j. On 13 March 1969, the convening authority suspended the unexecuted portion of Petitioner's sentence to confinement for six months. See enclosure (7).

k. On 10 April 1969, Petitioner requested to be released from active duty. See enclosure (8).

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USMC, [REDACTED]

1. On 10 April 1969, Petitioner was discharged from the Marine Corps for the convenience of the Government with a general (under honorable conditions) characterization of service. See enclosure (2).

m. Petitioner contends that he was suffering from what he now recognizes as post-traumatic stress disorder (PTSD) during and after his service in Vietnam. He asserts that he was been diagnosed with PTSD by three private physicians, but provided no documentation in this regard. He claims to have visited sick bay numerous times during his last two months in Vietnam and during his four months at Guantanamo Bay, but was told that he was suffering from either exhaustion or anxiety. As he awaited his discharge from the Marine Corps at Camp Lejeune, Petitioner claims that his nightmares increased and his depression was a constant struggle. He claims to have requested leave to visit his family doctor since his visits to sick bay were unproductive, but was denied. On the verge of a mental breakdown, he claims that he went UA with the intention of being gone for only a couple of days to see his family doctor. However, this doctor reportedly prescribed a medication which rendered him like a “zombie.” This extended his absence, and when he returned he was court-martialed. After his conviction, Petitioner contends that he was never sent to the Brig. Instead, he was called to headquarters and met with “some officer” who said that he could help, and that if Petitioner stayed out of trouble for the remainder of his commitment to the military he would “write it up that all charges would be dropped.” Finally, Petitioner contends that his supervisor had recommended him for promotion to E-4 prior to his misconduct. See enclosure (1).

n. Petitioner’s application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board’s consideration. Although there were no medical records to review, the AO found that Petitioner provided a credible description of his symptoms and treatment from his family physician. It also found that Petitioner’s UA from 2 December 1968 to 20 January 1969 appears to have been related to mental health symptoms. Accordingly, the AO found sufficient evidence that Petitioner exhibited behaviors associated with a mental health condition during his military service, and that his misconduct may be mitigated by his mental health condition. See enclosure (9).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner’s application warrants relief.

Because Petitioner based his claim for relief in whole or in part upon his PTSD condition, the Majority reviewed his application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner’s claimed mental health condition, and the effect that it may have had upon his misconduct. Granting very liberal consideration, the Majority agreed with the AO conclusion that there was evidence that Petitioner suffered from the mental health condition, and that this condition may have mitigated Petitioner’s misconduct.

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In addition to applying liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) – (d), 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 Board considered, among other factors, that Petitioner may have developed a mental health condition during his military service and that this condition may have mitigated his misconduct, as discussed above; Petitioner's combat service in Vietnam; that Petitioner's record reflected generally high conduct and proficiency marks during his service in Vietnam; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon the totality of the circumstances, the Majority believed that the mitigating circumstances outweighed Petitioner's misconduct. Accordingly, the Majority determined that relief is warranted in the interests of justice, and that Petitioner's characterization of service should be upgraded to honorable.

Despite finding that Petitioner's characterization of service should be upgraded in the interests of justice, the Majority did not believe that an upgrade to Petitioner's rank was warranted. The provisions of reference (b) – (d) do not apply to rank upgrades, so liberal consideration is not warranted in this regard. Additionally, with two NJPs and a SPCM conviction, the Majority found that Petitioner's rank reduction was appropriate, even given the potentially mitigating circumstances.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as honorable.

That Petitioner be issued an Honorable Discharge certificate.

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

That no further corrective action be taken on Petitioner's naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority also applied liberal consideration to Petitioner's mental health condition and the effect that it may have had upon Petitioner's misconduct in accordance with references (b) – (d), and 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 Minority generally agreed with the Majority and the AO that, granting very liberal consideration, there is evidence that

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Petitioner suffered from a mental health condition at the time of his military service and that this condition may have mitigated his misconduct. Even considering this mitigation, however, the Minority did not believe that relief was warranted under the totality of the circumstances. Given that Petitioner had two NJPs and a SPCM conviction, the Minority believed that his misconduct significantly outweighed all of the potentially mitigating circumstances. Further, the Minority noted that Petitioner received significant clemency from the convening authority, who suspending all of his adjudged confinement, and that a general (under honorable conditions) characterization of service was extremely generous under the circumstances.

The Minority also agreed with the Majority conclusion that an upgrade to Petitioner's rank is not warranted.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on 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 titled matter.

5. The foregoing action of the Board is submitted for your review and action.

9/22/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to Honorable; No Change in Grade)

~~MINORITY Recommendation Approved (Deny Relief)~~

~~Petitioner's Request Approved (Full Relief – Upgrade to Honorable; Upgrade Rank to E-4)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]