



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

█  
Docket No: 3372-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USMC,  
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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) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (TBI)," of 24 February 2016  
(d) USD 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) 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  
(f) Advisory Opinion of 16 August 2021

Encl: (1) DD Form 149 w/attachments  
(2) Case summary

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 upgrading his discharge characterization to honorable or, alternatively, to general (under honorable conditions) and to remove "negative connotations" from his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, and █ reviewed Petitioner's allegations of error and injustice on 8 November 2021 and, pursuant to its regulations, determined that 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, and references (b) through (e), which 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 24 February 2016 guidance

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from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (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 reference (f) 16 August 2021 advisory opinion (AO) furnished by a qualified mental health provider.

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

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

b. The Petitioner enlisted in the Marine Corps and commenced a period of active duty on 20 November 1968. From 25 June 1970 to 23 March 1971, the Petitioner participated in six named combat operations in the ██████████. The Petitioner served without incident prior to his combat service in ██████████. On 26 March 1971, the Petitioner received nonjudicial punishment for being disrespectful to a medical doctor, being disrespectful to a staff sergeant, and for being drunk and disorderly. On 29 March 1971, the Petitioner received nonjudicial punishment for failing to go to his appointed place of duty. On 29 July 1971, the Petitioner received nonjudicial punishment for disobeying an order to report to work at 0800. The Petitioner commenced a period of unauthorized absence on 4 October 1971, which ended by his surrender on 26 October 1971. On 26 October 1971, the Petitioner received nonjudicial punishment for this period of unauthorized absence. On 29 December 1971, the Petitioner received nonjudicial punishment for appearing in the battalion area without his cover or wearing a necktie. On 26 February 1972, the Petitioner was found guilty in a civilian criminal court for assault with intent to kill and was sentenced to a juvenile facility for a period not to exceed three years as a youth offender.

c. On 7 March 1972, the Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He exercised his right to an administrative board and his administrative board was held on 1 June 1972. At the administrative board, his commanding officer testified on his behalf, stating that the Petitioner was not a chronic disciplinary problem, that the Petitioner was an average performer, and that he did not think the Petitioner should receive an undesirable discharge because there was question as to his guilt. His commanding officer further testified that he acted as the command's representative during the civilian proceedings and it did not appear to him that the Petitioner was guilty. In addition, at the administrative board, a program adviser from the youth facility in which the Petitioner was confined testified that the Petitioner asked for parole so that he could continue serving in the Marines and finish honorably. The Superintendent of the youth facility wrote a letter to the board stating that if the Marines retained the Petitioner, he may be able to be released to the Marines. The Petitioner testified and explained the circumstances of the civilian charge and he also stated that the reason he went on his period of unauthorized absence was because his baby boy died. The administrative board determined that the Petitioner was unfit for service and

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recommended that he be discharged under other than honorable conditions. On 15 June 1972, a Marine Staff Judge Advocate found the Board findings to be sufficient in law and fact. On 30 June 1972, the Petitioner was discharged with an other than honorable (OTH) characterization of service.

d. On 20 February 1974, the Naval Discharge Review Board (NDRB) conducted a record review of the Petitioner's discharge, and determined that no change to his discharge was appropriate. In 1987, the Petitioner filed another application with the NDRB, in which he contended that he had good post-service conduct and character (letters from employers and co-worker, supervisor, college), he also noted his previous youth and immaturity, his service in [REDACTED] and he was not guilty of the civil conviction. On 21 July 1987, the NDRB denied his application. In 2001, the Petitioner filed a petition with this Board, stating that his misconduct that resulted in his other than honorable discharge should be mitigated by his youth and immaturity, his personal problems, and his service in [REDACTED]. On 8 August 2001, this Board denied his petition given the seriousness of his civil conviction and his five punishments.

e. The Petitioner contends that he suffered from a mental health condition or PTSD as a result of his military service. Petitioner contends that he participated in six combat operations in [REDACTED] where he engaged with the enemy, killed and injured the enemy, and witnessed his fellow Marines being shot and dying. He states he was also exposed to defoliation chemicals. After the war he has been married three times, held four jobs, and is currently disabled. He was discharged due to a civilian conviction that Petitioner contends was tinged by racism in the south in 1971. He provided documentation from his local Vet Center, which documents his diagnosis of PTSD related to his military service.

f. In light of the Petitioner's assertion of MST, the Board requested the reference (f) AO. The AO is considered favorable to Petitioner, explaining that:

Petitioner's Official Military Personnel File revealed misconduct to include drunk and disorderly, unauthorized absence, and a civilian conviction. He served in five operations in [REDACTED] and was the recipient of the Combat Action Ribbon, as well as others. Records from his administrative separation hearing commented on his civilian criminal trial, "...command representative during the respondent's civil court trial...the respondent did not appear to him to be guilty of the charges...felt the respondent should not be given an undesirable discharge...there was some doubt as to his guilt concerning the civil charges..." Petitioner's sworn statement explained he should not have five nonjudicial punishments because, he "...didn't hear the order that was supposedly given and that he went into unauthorized absence when his baby son died." Petitioner's description of the circumstances surrounding his civilian charges in his application versus documentation contemporary to his military service are not consistent; however, both support a claim of innocence. Petitioner also provided documentation from his local Vet Center, dated 9 March 2018, which confirmed a post-discharge diagnosis of PTSD related to his military service. Petitioner's increased irritability and agitation are consistent with PTSD and misconduct such as disrespect could be attributed to a mental health condition. Additionally, his

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drunk and disorderly misconduct could be attributable to a mental health condition given persons frequently resort to maladaptive coping skills (i.e., excessive alcohol use) to cope with mental health symptoms. Although his recollection does not coincide with the documentation, regarding the circumstances of the civilian charges, this could be attributed to the passage of time.

The AO concluded, "it is my considered clinical opinion Petitioner exhibited behaviors associated with PTSD during his military service and his in-service misconduct may be mitigated by his PTSD."

## CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (f), the Board determined that the Petitioner is entitled to complete relief. In reaching its decision, the Board concurred with the AO's finding that the Petitioner's misconduct while on active duty could be mitigated by his experience of PTSD as a result of his combat tours in [REDACTED]. Further, the Board found persuasive the testimony of the Petitioner's commanding officer at his administrative board, wherein the commanding officer testified that he did not believe the Petitioner should receive an undesirable discharge, that the Petitioner was an average performer and not a chronic disciplinary problem, and that, as his command's legal observer, he questioned the Petitioner's guilt after observing the Petitioner's civilian criminal trial.

Accordingly, in view of all of the matters presented, and as noted above, the Board concluded that the Petitioner's requested relief be granted as specifically described below.

## RECOMMENDATION

In view of the above, the Board directs the following corrective action: Petitioner be issued a new DD Form 214 reflecting that his characterization of service at the time of his discharge was Honorable, MARCORSEPMAN 6012.1g separation authority, Directed by the Secretary of the Navy to Correct Official Records narrative reason for separation, JFF2 SPD, RE-1A reenlistment code.

That the Petitioner be issued an Honorable discharge certificate.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings shall 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 Regulations Section 723.6(e)), and

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having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/11/2022

[REDACTED]

Executive Director

[REDACTED]