



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

[REDACTED]
Docket No: 3808-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USMC, XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Case summary
(3) Advisory opinion of 18 October 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 naval record be corrected by upgrading his discharge characterization to honorable, or alternatively general (under honorable conditions).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 December 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 from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by

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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 enclosure (3) 18 October 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 28 January 1969. The Petitioner served in a combat role in the Republic of Vietnam from October 1969 to March 1970, during which he earned the Vietnam Service Medal with three stars and the Vietnam Campaign Medal. On 22 June 1970, the Petitioner was convicted by a special court-martial for disobeying a lawful order, and was sentenced to reduction in rank, hard labor with no confinement for a period of 30 days and forfeiture of pay. On 20 November 1970, he received nonjudicial punishment for a period of unauthorized absence of about one day in length. On 8 March 1971, he received nonjudicial punishment for failing to go to his appointed place of duty on two occasions. On 9 March 1971, he received nonjudicial punishment again, for being disrespectful to a noncommissioned officer and for disobeying an order by having alcohol in his barracks. On 16 June 1971, he was convicted by a special court-martial for a 25 day unauthorized absence, and was sentenced to reduction in rank, confinement at hard labor for a period of three months and forfeiture of pay. On 5 November 1971, he received nonjudicial punishment for disobeying the order of a commissioned officer. On 1 December 1971, he received nonjudicial punishment for failing to go to his appointed place of duty. On 8 December 1971, the Petitioner was notified of the initiation of administrative separation processing, and he waived his right to an administrative board. On 28 December 1971, the Petitioner's Commanding General directed that the Petitioner be discharged with an undesirable discharge due to unfitness, and on 7 January 1972, he was so discharged.

c. The Petitioner submitted an application for an upgrade to his discharge characterization, and on 7 July 1977 the Naval Discharge Review Board (NDRB) changed the characterization of his discharge to general, under honorable conditions in accordance with the provisions of the Special Discharge Review Program (SDRP). However, on 1 May 1978, the NDRB declined to confirm the general discharge under its uniform discharge review standards, thus denying the Petitioner Veterans' benefits.

d. In 2006, the Petitioner filed a petition with this Board, citing his youth and PTSD. On 26 January 2007, this Board denied his petition. In 2014, the Petitioner sought reconsideration of his case, which this Board denied on 14 January 2016.

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e. The Petitioner contends that he had undiagnosed PTSD during his service, which was onset during his time serving in combat in Vietnam. In support of his petition, the Petitioner included a written narrative of his time serving in Vietnam, post-service medical records, as well as a written brief with attachments.

f. In light of the Petitioner's assertion of PTSD, the Board requested the enclosure (3) AO. The AO is considered favorable to Petitioner, explaining that:

Petitioner's in-service records revealed on 11/3/71, he was psychiatrically evaluated at [REDACTED] as part of his application for the drug exemption program. The psychiatrist noted his drug abuse was 'a consequence of difficulty dealing with feelings generated within military regimentation and combat.' The psychiatrist assessed him as neither psychologically or physiologically dependent on drugs and was not a candidate for psychological therapy. The remainder of Petitioner's in-service records did not contain any additional mental health diagnoses, or psychological symptoms/behavioral changes that would indicate additional mental health disorders. Throughout his military service, disciplinary actions and administrative processing, there were no indications of a mental health condition requiring referral to mental health resources.

Petitioner provided a credible history of experiencing PTSD as a result of combat-related traumatic stressors from his service in the Vietnam War, along with extensive corroborating post-discharge clinical evidence of diagnoses of PTSD, Depression, and Alcohol Use Disorder stemming from his Vietnam experience. His misconduct during service can be attributed to symptoms frequently associated with PTSD such as irritability and anger outbursts (disrespect, failure to obey orders, insubordinate conduct), avoidance behavior (UA, failure to report to appointed place of duty), and substance abuse as a maladaptive coping behavior for psychological distress.

The AO concluded that, "based on the available evidence, it is my considered medical opinion there was sufficient indirect evidence to support Petitioner's contention of an unfitting mental health condition (PTSD) incurred as a result of his military service, and that his in-service misconduct be attributed to an unfitting mental health condition."

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (e), as well as the enclosure (3) AO, the Board determined that the Petitioner is entitled to relief in the form of upgrading his discharge characterization to general (under honorable conditions). 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. In reaching its conclusion, the Board balanced the mitigating factors the Petitioner presented on the one hand, with the variety and frequency of misconduct that he engaged in while on active duty (five nonjudicial punishments and conviction by two special courts-martial), on the other hand. In so balancing, the Board determined that the quality of the Petitioner's service, with mitigation applied, rated the issuance of a general (under honorable conditions) characterization of service.

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The Board noted that, to the extent that the determination of the NDRB in 1977 upgrading the Petitioner's discharge to general (under honorable conditions) was not authorized to be confirmed under the SDRP, this current discharge characterization upgrade to general (under honorable conditions) shall be reflected in the issuance of a new Certificate of Discharge or Release from Active Duty (DD Form 214) without any qualifications that may exist or have existed under the SDRP.

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

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 general (under honorable conditions).

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 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.

1/16/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]