



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

██████████
Docket No: 3909-21

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) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion of 17 Nov 21

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 discharge be upgraded to reflect honorable service. Enclosures (1) and (2) apply.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 10 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by 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. Petitioner enlisted and began a period of active duty on 5 April 1967.
 - c. On 25 May 1968, while attached to ██████ Battalion, ██████ Marines, ██████ Marine Division and serving in the Republic of Vietnam, Petitioner was injured during an ambush and subsequently transferred to U.S. Army Hospital ██████████ via medical evacuation. Petitioner's progress notes indicated that he avoided the medical ward and routinely did not attend treatment.

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d. While attached to Casual Company in a sick/injured status, Petitioner received his first nonjudicial punishment (NJP) for Article 134, wrongful possession of a liberty pass which he "rented" to another Marine. During his hospitalization, Petitioner incurred a second NJP for Article 86 for a period of unauthorized absence (UA) from 6 – 7 September 1968.

e. Following opinions from three orthopedic doctors, Petitioner was placed on a permanent physical profile. He returned to his unit on 10 October 1968, with a doctor's note in his profile that further medical evacuation was not required if his unit would assign him to a desk job.

f. On 26 October 1968, Petitioner's unit transferred him back to [REDACTED] Company hospital care in the continental U.S. While hospitalized at Naval Hospital [REDACTED], Petitioner incurred repeated periods of UA beginning 30 December 1968. He surrendered on 4 February 1969 and was placed into pre-trial confinement pending Special Court-Martial (SPCM). Petitioner was found guilty before SPCM of Article 86, UA, Article 107, false official statement to a petty officer that he was a corporal, and Article 134, wrongful impersonation of a noncommissioned officer.

g. Following his release from confinement, Petitioner committed two additional periods of UA from 14 -16 July 1969 and from 28 July – 1 August 1969. He was convicted by Summary Court-Martial on 18 August 1969, for these aforementioned periods of UA.

h. Petitioner committed an additional four periods of UA from 12-17 September 1969, 19-21 September 1969, 6 – 16 October 1969, and 27 October 1969 – 31 January 1970. At the time of his final surrender to the Federal Bureau of Investigation (FBI), Petitioner reported that he had been admitted to [REDACTED] Memorial Hospital for treatment of a nervous condition.

i. An FBI letter of 9 February 1970 documented coordination efforts to return Petitioner to the Marine Corps. The FBI relayed concerns from Petitioner's mother regarding his mental health status and her request that he receive psychiatric help. A Marine Corps major advised the FBI that a staff psychiatrist would provide Petitioner with the requested treatment upon his return to the military.

j. Upon return to military custody, Petitioner was confined awaiting trial before SPCM for four specifications of UA, from his previous absences, and for Article 91, for failure to report as ordered. Petitioner requested discharge in lieu of trial.

k. On 18 March 1970, Petitioner was apprehended by civil authorities at Niagara Falls Memorial Hospital and confined to a local jail.

l. Petitioner's request for separation in lieu of trial was approved on 2 April 1970, and he was discharged on 3 April 1970.

m. Petitioner submitted evidence attesting to his receipt of counseling services from the Veteran's Administration (VA) for diagnosed PTSD, which the VA attributes to trauma from his military combat experiences in Vietnam which was then exacerbated during his prolonged periods of hospitalization by continued exposure to severely wounded service members.

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n. In light of the Petitioner's assertion of PTSD, the Board requested enclosure (2), the AO. The AO is considered favorable to Petitioner, opining that there is evidence Petitioner incurred PTSD during his military service and that a majority of his in-service misconduct could be attributed to symptoms of PTSD. The AO also noted that an ongoing lack of mental health care led to the worsening of Petitioner's in-service symptoms and attributed his periods of UA to his need to avoid triggering stimuli.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone his actions. However, based upon Petitioner's service record and the matters presented for consideration, to include the positive AO, the Board found that Petitioner suffered PTSD incurred during his military service in the Republic of Vietnam and that the mitigating effect of his untreated and exacerbated condition was sufficient to outweigh all of his misconduct. The Board noted that, prior to his combat injury, Petitioner served honorably and without misconduct while attached to his combat unit in the Republic of Vietnam. The Board concurred with the AO's assessment that Petitioner's avoidant behavior and associated misconduct appears to have resulted from his prolonged hospitalization, which continued in spite of a medical recommendation to the contrary that he could continue to serve with his combat unit. Further, the Board observed that Petitioner's records indicate he appeared to be seeking mental health care during his periods of UA, specifically noting not only the FBI message confirming his mother's request that he receive psychiatric care, but lack of evidence that Petitioner's command followed through on its assurances to request psychiatric treatment for him. As such, the Board concurred with the AO's opinion that a continued lack of mental health care during this period contributed to worsening PTSD symptoms sufficiently to outweigh his misconduct. Therefore, it is in the interest of justice and fundamental fairness to grant the requested relief.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 3 April 1970, he was discharged with an "Honorable" character of service, "MARCORSEPMAN par. 6012.1f" separation authority, "Convenience of the Government – When directed by the Secretary of the Navy" narrative reason for separation, and reentry code "RE-1A".

That Petitioner be issued an honorable discharge certificate.

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

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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.

12/25/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]