



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

██████████
Docket No: 3911-21

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) 10 U.S.C. § 1553
(c) Presidential Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters," of 16 September 1974
(d) Presidential Memo, "Discharge Recharacterization for Certain Vietnam Era Service Members," of 19 January 1977
(e) Public Law 95-126, "Veterans' benefits Entitlement, denial to certain veterans with upgraded discharges," of 8 October 1977
(f) 38 C.F.R. § 3.12(c)(2), "Character of Discharge"
(g) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(h) PDUSD Memo of 24 Feb 16 (Carson Memo)
(i) USD Memo of 25 Aug 17 (Kurta Memo)
(j) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(2) Advisory Opinion of 15 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 the Board issue an authoritative decision on his Bad Conduct discharge adjudged by General Court-Martial, and previously upgraded following review by the Naval Discharge Review Board (NDRB) under references (b) through (d), due to his post-traumatic stress disorder (PTSD) and clemency. He also impliedly requested that the separation authority and narrative reason for discharge be changed. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 24 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, applicable statutes, regulations, and policies, to include references (g) through (j). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider.

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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 23 September 1964.

c. On 20 April 1965, Petitioner deployed to the Republic of Vietnam (RVN) as an infantryman. He subsequently served in combat from 7 May 1965 through 27 March 1966.

d. On 7 January 1966, Petitioner received nonjudicial punishment (NJP) for sleeping on post.

e. On 9 February 1966, Petitioner was wounded in action, received treatment for his injuries, and returned to combat. He was awarded a Purple Heart Medal for his combat injuries.

f. On 2 April 1966, Petitioner departed RVN and arrived at [REDACTED] on 8 April 1966, where he was assigned to logistics duties with the [REDACTED] Marine Aircraft Wing.

g. On 7 November 1966, Petitioner received NJP for absent from station without checking out on liberty and disobedience of a lawful order of a medical officer, specifically to stay aboard and remain in bed.

h. On 9 January 1967, Petitioner received NJP for unauthorized absence (UA), totally seven hours. As part of his punishment, he was sentenced to 30 days restriction.

i. While serving the aforementioned restriction, Petitioner committed two additional periods of UA from 22 January to 18 April 1967 and 29 April to 20 October 1967, surrendering to military authority on both occasions.

j. Petitioner's command requested a psychiatric evaluation during his pretrial confinement for his pending Article 32 investigation. During this evaluation, Petitioner expressed a strong desire to return to combat as part of an infantry unit, to include stating that he had submitted a request toward that end and, after it was denied, he believed his UAs would result in a court-martial that would spur his assignment back to a combat unit where he felt he belonged. The psychiatric evaluation focused primarily on his preservice childhood history and purported drug use; it diagnosed him as having marked psychiatric impairment with a premorbid disposition and an antisocial personality, but assessed that any external precipitating in-service stress was "minimal" and "routine" for Marine Corps service and that he was responsible for his actions.

k. On 17 January 1968, Petitioner was tried and found guilty at General Court-Martial for committing two counts of Article 32 (UA) and one count of Article 134 (restriction breaking) and was sentenced to 9 months confinement, reduction to E-1, forfeitures of all pay, and a Bad Conduct Discharge (BCD). On 11 June 1968, his sentence and conviction were affirmed by appellate review.

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l. On 3 July 1968, the Naval Clemency Review Board denied Petitioner's request for clemency restoration, and he was discharged on 26 November 1968 with a BCD.

m. On 10 June 1977, following the issuance of references (c) and (d), the NDRB reviewed Petitioner's discharge under a standard of liberal clemency and granted an upgrade to his discharge to general by reason of convenience of the government.

n. On 3 February 1978, Records Branch, Personal Service Division, issued a correction to Petitioner's Report of Separation from Active Duty (DD 214) cancelling his discharge under conditions other than honorable and superseding it by issuing a corrected DD 214 reflecting his upgraded discharge under the authority of reference (b).

o. Because its clemency review predated reference (e), the NDRB conducted the required case-by-case review of Petitioner's discharge under standards applicable prior to references (b) and (c), finding that the discharge under honorable conditions was warranted.

p. The Veteran's Administration (VA) reviewed Petitioner's discharge and issued a decision on 15 October 1981, finding that, although the NDRB had upgraded his characterization of service to honorable conditions, his discharge by reason of sentence of General Court-Martial constituted a statutory bar to VA benefits. The VA reaffirmed this decision on 15 July 2020, expressly stating that only favorable action by a Navy Board for Correction of Military Records will overcome a statutory bar under reference (f).

q. With his application, Petitioner claimed that he developed PTSD in-service following his experience in combat operations. He described specific in-service traumatic stressors in support of his claim and outlined the connection between his PTSD and his misconduct upon returning from the Vietnam War, to include his inability to readjust to a non-combat environment and his survivor's guilt. Petitioner submitted clinical records of his treatment for diagnosed PTSD in support of these claims.

r. Petitioner submitted matters for consideration of post-discharge clemency, to include two character letters from his adult children who have observed his life-long struggle with his PTSD since their early childhood. They attest to the severity of his symptoms and its impact on his behavior, but also praise the extraordinary effort he made to provide them with a loving and secure home, raising them to have strength, confidence, and a positive self-image in spite of being a single parent and enduring chronic mental distress.

s. In light of the Petitioner's assertion of PTSD, the Board requested the enclosure (2) AO. The AO is considered favorable to Petitioner, opining Petitioner may have incurred PTSD during his military service and that his misconduct, though more pronounced due to an underlying personality disorder, could be mitigated by his traumatic combat experiences. The opinion notes that Petitioner provides a plausible history of exposure to traumatic combat stressors as well as post-discharge clinical records and personal statements consistent with PTSD, supported by his personal and unit citations, including his Purple Heart for combat injuries.

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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 (g) through (j) 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 overall record, including his personal combat history and injuries, previous actions taken under reference (c), and the matters he presented for consideration, the Board found that Petitioner suffered PTSD due to combat trauma, that he incurred PTSD during his military service, that his PTSD mitigated his in-service misconduct, and that the mitigating effect of his condition outweighed his misconduct notwithstanding his conviction and sentence by General Court-Martial. Therefore, it in the interest of fundamental fairness to grant 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 DD Form 214 to indicate that on 26 November 1968, he was discharged with an "under honorable conditions" character of service and "300 Convenience of the government, Paragraph 13261.1h, Marine Corps Personnel Manual (when directed by the Secretary of the Navy)" reason and authority.

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

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.

12/1/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]