



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

█  
Docket No: 4541-21

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █ 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 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 w/attachments  
(2) DD Form 214  
(3) NAVMC 118(11), Administrative Remarks  
(4) NAVMC 118(17), Sea and Air Travel-Embarkation Slips  
(5) NAVMC 118(9), Combat History – Expeditions – Awards Record  
(6) HQ, █ Battalion, █ Marines, █ Marine Division (█) Special Court-Martial Order Number █ █  
(7) NAVMC 118(12), Offenses and Punishments  
(8) Department of Veterans Affairs Letter, 20 December 2018  
(9) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 12 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 characterization of service be upgraded to honorable and that his rank be reinstated to Lance Corporal.<sup>1</sup>

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<sup>1</sup> Petitioner did not originally request restoration of his rank, but added this request in a letter received by the Board on 9 September 2021.

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[REDACTED]

2. The Board reviewed Petitioner's allegations of error or 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 the enclosures, relevant portions of Petitioner's naval records, 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 13 May 1969. See enclosure (2).

d. On 13 May 1970, Petitioner was informed by his commanding officer that he was not being recommended for reenlistment because of his lack of initiative and requirement for constant supervision. See enclosure (3).

e. On 17 July 1970, Petitioner deployed to [REDACTED]. See enclosure (4). While deployed in [REDACTED] he participated in counter-insurgency operations and Operation [REDACTED]. See enclosure (5).

f. On 31 December 1970, Petitioner was convicted by a special court-martial (SPCM) of willfully violating the lawful order of a superior commissioned officer to remain quiet until asked a question in violation of Article 90, Uniform Code of Military Justice (UCMJ), and for wrongfully using provoking gestures by contemptuously removing his cover and making faces toward the same officer in violation of Article 117, UCMJ.<sup>2</sup> He was sentenced to confinement at hard labor for two months, to forfeit \$50.00 pay per month for three months, and to be reduced to pay grade E-1. See enclosure (6).

g. On 21 February 1971, Petitioner departed [REDACTED]. See enclosure (4).

h. On 28 July 1971, Petitioner received nonjudicial punishment (NJP) for willfully failing to obey a lawful order by a superior noncommissioned officer to get a haircut in violation of Article 92, UCMJ. See enclosure (7).

i. On 15 August 1971, Petitioner was released from active duty upon the expiration of his active service obligation with a general (under honorable conditions) discharge. See enclosure (2).

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<sup>2</sup> The SPCM found Petitioner not guilty of a third charge of assaulting a fellow Marine in violation of Article 128, UCMJ, upon motion of the defense.

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[REDACTED]

j. On 4 September 2018, the Department of Veterans Affairs (VA) awarded Petitioner a 50 percent disability rating for service-connected post-traumatic stress disorder (PTSD). This determination raised Petitioner's combined disability rating to 70 percent. See enclosure (8).

k. Petitioner contends that relief is warranted because he was falsely accused of assault, and was charged for disrespecting an officer as he was trying to defend his honor. The assault charge was dropped against him, but the disrespect charge remained. Petitioner asserts that the characterization of his service was not warranted, and should be changed to honorable. Petitioner provided evidence that the VA granted him a service-connected disability rating for PTSD (see paragraph 3j above), and that his characterization of service brings back traumatic memories, including that of his platoon sergeant being killed. See enclosure (1).

l. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. The AO noted no evidence in Petitioner's service records of a mental health diagnosis. It also found insufficient information to establish the timing of the onset and/or development of Petitioner's mental health symptoms or to identify a nexus with Petitioner's misconduct. Accordingly, the AO found sufficient evidence that Petitioner's developed PTSD during his military service based upon the VA rating decision, but insufficient evidence that his misconduct was mitigated by PTSD or another 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 relief is warranted in the interests of justice.

Because Petitioner based his claim for relief in whole or in part on combat-related PTSD, the Majority reviewed Petitioner's application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner's claimed PTSD condition and the effect that this condition may have had upon his misconduct. Even applying liberal consideration, however, the Majority could find no nexus between Petitioner's misconduct and his PTSD condition. Petitioner was not discharged for misconduct. He was discharged upon the expiration of his enlistment, and his service was characterized consistently with his mediocre performance trait ratings. While these ratings were undoubtedly affected by Petitioner's misconduct, Petitioner was notified that he would not be recommended for reenlistment due to his performance before he deployed to Vietnam. Further, the misconduct in Petitioner's record is not of the type typically associated with PTSD. Accordingly, the Majority did not find that Petitioner's PTSD condition mitigated his misconduct. Although not making this finding, the Majority considered the existence of Petitioner's condition among the totality of the circumstances to determine whether relief is warranted in the interests of justice as discussed below.

In addition to applying liberal consideration to Petitioner's PTSD 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

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other factors, that Petitioner likely developed PTSD as a result of his service in the Marine Corps and has continued to suffer its effects; Petitioner's combat service in [REDACTED]; the relatively minor nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon this review, the Majority determined that the mitigating circumstances outweighed the bases for Petitioner's characterization of service. The only misconduct in Petitioner's naval record was two instances of disobedience of trivial orders and one instance of disrespect. This misconduct could not be more insignificant, and would almost certainly not justify the convening of a SPCM today. Considering Petitioner's combat service in Vietnam and the fact that he developed PTSD as a result of this service, the Majority found that Petitioner's characterization of service should be upgraded as a matter of equity in the interests of justice.

The Majority found no error or injustice in the SPCM which reduced Petitioner's pay grade to E-1. It also noted that Petitioner received NJP subsequent to this SPCM, which may have reduced Petitioner's pay grade if it could have been any further reduced at the time. Accordingly, the Majority did not believe that the restoration of Petitioner's rank to Lance Corporal was warranted.

#### 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 proceeding 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.

Like the Majority, the Minority also applied liberal consideration to Petitioner's PTSD condition and the effect that it had upon Petitioner's misconduct in accordance with references (b) – (d), and 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 agreed with the Majority conclusion that there was insufficient evidence of any nexus between Petitioner's PTSD condition and his misconduct. The Minority disagreed with the Majority conclusion, however, that relief was warranted in the interests of justice given the totality of the circumstances. As the Majority noted, Petitioner was not discharged for his misconduct. He was discharged in due course upon the expiration of his active service obligation, and his service was characterized

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consistently with his performance trait ratings. Further, the evidence reflects that Petitioner's performance as a Marine was considered to be marginal even before he deployed to [REDACTED] and engaged in the misconduct which resulted in court-martial and NJP. Accordingly, the Minority found no error or injustice in the fact Petitioner's service was characterized in the same manner as would be that of any other Marine under similar circumstances.

**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.

11/19/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

**MAJORITY Recommendation Approved (Grant Relief – Upgrade to Honorable)**

MINORITY Recommendation Approved (Deny Relief)

12/3/2021

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]