



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

█
Docket No: 5850-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █,
USN, XXX-XX-█

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 with enclosures
(2) Advisory Opinion of 6 Dec 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 naval record be corrected to reflect an honorable characterization of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 18 February 2021 and pursuant to its regulations determined 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, to 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 advisory opinion (AO) furnished by a 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review Petitioner's application on its merits.

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c. Petitioner enlisted and entered a period of active duty in the Navy on 28 January 1965 at the age of 17.

d. On 3 September 1965 Petitioner received nonjudicial punishment (NJP) for failure to obey a lawful order and dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ).

e. Petitioner received a second NJP on 15 March 1967 for being absent from his unit in violation of Article 86, UCMJ.

f. On 22 March 1967, Petitioner received a third NJP for being absent from his appointed place of duty, missing movement of his craft, and disobeying a lawful order in violation of Articles 86, 87, and 92, UCMJ.

g. Petitioner received a fourth NJP on 22 September 1967 for failure to obey a lawful order in violation of Article 91, UCMJ.

h. On 10 December 1968, Petitioner was convicted by special court martial (SPCM) for a 211 day unauthorized absence (UA) in violation of Article 86, UCMJ.

i. On 9 September 1969, Petitioner was convicted at a second SPCM for three specifications of UA totaling 126 days and two specifications of breaking restriction in violation of Articles 86 and 134, UCMJ.

j. On 27 October 1969, Petitioner underwent a psychiatric evaluation and was diagnosed with "Personality, Passive-Aggressive, moderate, manifested by his poor service record."

k. A counseling entry dated 13 November 1969 indicates "[Petitioner] stated to the [prisoner personnel officer] he will not comply with lawful orders issued by this command to return to duty and that he will go UA if ordered to return to duty."

l. On 10 December 1969, Petitioner was notified of administrative separation processing by reason of frequent involvement of a discreditable nature with military authorities and waived his procedural rights.

m. During his period of service, Petitioner was in a UA status for 337 days and confined for 273 days. Petitioner's total period of lost time is 610 days.

n. On 18 December 1969 Petitioner's commanding officer recommended he be separated with an Undesirable discharge.

o. Petitioner was separated with a General (Under Honorable Conditions) characterization of service on 9 January 1970.

p. Petitioner was awarded a Meritorious Unit Commendation for the period of 15 November 1966 to 30 June 1967 while conducting operations in the harbors of the Republic of Vietnam.

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His DD Form 214 indicates he was awarded the National Defense Service Medal, Vietnam Service Medal with a bronze star, and the Vietnam Campaign Medal.

q. Petitioner contends he experienced traumatic events while serving in Vietnam, that these experiences resulted in developing PTSD, and this condition contributed to his misconduct. He states he experienced participation in harbor defense operations (boarding, inspecting, detaining vessels and personnel); a grenade resulting in the deaths of two Sailors; facing frequent small-arms and mortar attacks; launch of the Tet Offensive; and the deaths of many of his friends because of bad orders. He states his undiagnosed PTSD caused him to be unable to follow orders nor complete his military service. He states that he was administratively discharged due to Passive Aggressive Personality Disorder but that his condition was actually PTSD. He contends he should have been processed through medical channels which would have resulted in an honorable discharge.

r. Petitioner provided Department of Veterans Affairs (VA) medical records in support of his application. On 2 December 2015, he was diagnosed with PTSD and Major Depressive Disorder, recurrent, moderate.

s. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 6 December 2021. The AO noted that in-service, the Petitioner was diagnosed with a personality disorder, indicating unsuitability for military service. The AO further stated that the evaluation was conducted after the Petitioner had served 18 months in Vietnam and it is reasonable that the symptoms which were conceptualized as a personality disorder were unrecognized PTSD symptoms, as the VA has determined post-service. The AO concluded that there is evidence that the Petitioner incurred PTSD during military service, and there is evidence that the majority of his misconduct could be attributed to PTSD.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief.

In its deliberations the Board applied liberal consideration and evaluated the AO. Although the Board concurred with the AO, it found the duration and frequency of Petitioner's absences to be significant, particularly during combat operations. Accordingly, the Board determined the characterization of service that Petitioner received at discharge was appropriate in light of the seriousness of his misconduct. Specifically, the Board found Petitioner's misconduct to be too serious to be mitigated by the evidence of his mental health condition and felt that his discharge was already mitigated sufficiently based on his extensive record of misconduct that should have qualified for an Other than Honorable characterization of service. However, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason, separation code, and separation authority should be changed to "Secretarial Authority."

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RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214 indicating the narrative reason for separation as "Secretarial Authority," separation authority as "MILPERSMAN 1910-164," and separation code as "JFF."

That no further corrective action should be taken.

That 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.

3/14/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]