



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

[REDACTED]  
Docket No: 7487-21

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 29 December 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), changing his narrative reason for discharge to Secretarial Plenary Authority, changing his separation code to JFF, and his reentry code to RE-1. He also requested the removal of records relating to his violation of Article 92 of the Uniform Code of Military Justice, and that he be awarded additional medals that he may be entitled to based on his service in Southwest Asia.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 January 2022, 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

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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 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) 29 December 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, except with his request for the award of additional medals or awards, 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 13 September 1989. On 12 October 1989, he received nonjudicial punishment for unauthorized absence. From 18 April 1991 to 15 July 1991, he participated in Operations Provide Comfort, [REDACTED] and [REDACTED] while in Northern Iraq with [REDACTED]. On 3 September 1992, the Petitioner received nonjudicial punishment for violating a general order by leaving a post without being relieved and for disrespect to a corporal of the guard. On 11 September 1992, the the Petitioner submitted a request for discharge in lieu of a trial by court-martial. On 22 September 1992, a Marine Staff Judge Advocate found the Petitioner's request for discharge to be sufficient in law and fact. On 25 September 1992, the Petitioner's commanding officer approved the Petitioner's request for discharge in lieu of trial by court-martial, and on 16 October 1992, he was discharged with an other than honorable characterization of service.

c. The Petitioner contends that the charges that were the proximate reason for the tendering of his request for discharge in lieu of trial by court-martial were unfair and improper, and were tinged with racism. He contends he demanded a trial by court-martial against assault on noncommissioned officer (NCO)g charges because he contends he was defending women against a racist NCO. He further states his command berated him and beat him down by adding charges to his original charge sheet. He also contends that he suffered from PTSD as a result of service in Southwest Asia.

d. 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:

This opinion only addresses the mental health contentions in the petition. There is no evidence of a mental health diagnosis in service. Post-service, the VA has determined service connection for PTSD from events during his Iraqi deployment. It is possible that his misconduct in 1992 could be attributed in part to

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unrecognized PTSD symptoms of irritability and avoidance. His first NJP, which the Petitioner claimed the charges were erroneous, occurred prior to the deployment and is not attributable to a mental health condition.

The AO concluded, "it is my medical opinion that there is post-service evidence that the Petitioner may have incurred PTSD during military service. There is post-service evidence that most of his in-service misconduct could be attributed to PTSD."

## 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 partial 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 determined that partial relief was appropriate because of the nonjudicial punishment prior to the events that the Petitioner contends caused him PTSD as well as the nature and severity of the misconduct that the Petitioner engaged in that resulted in his discharge. Accordingly, in balancing the Petitioner's contentions and the finding of the AO, with the overall service record of the Petitioner, the Board determined that an upgrade to a general (under honorable conditions) characterization was appropriate.

With respect to the Petitioner's request for additional medals or awards that he contends he earned while serving in Southwest Asia, a preliminary review of his record reveals that he may not have exhausted his administrative remedies by submitting a written request to Headquarters, United States Marine Corps, Military Awards Branch (MMER). Thus, the Board denied this portion of his request.

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

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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.

1/26/2022

[REDACTED]

Signed by: [REDACTED]