



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

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Docket No: 7870-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ■■■■■■■■■■
■■■■■ 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 PTSD," of 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," of 24 February 2016
(d) PDUSD 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) USECDEF 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 with attachments
(2) Case summary

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 upgraded characterization of service.

2. The Board consisting of ■■■■■ and ■■■■■ reviewed Petitioner's allegations of error and injustice on 16 February 2022 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 references (b) through (e). Additionally, the Board also 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:

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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 in the Marine Corps and began a period of active duty on 2 January 1969.

c. On 7 April 1971, Petitioner was convicted by a general court-martial (GCM) of disrespect toward a superior commissioned officer, assault upon a superior commissioned officer, and failure to obey a lawful order. Petitioner was sentenced to confinement at hard labor for one year, forfeiture of all pay and allowances, reduction in rank to the paygrade of E-1, and a bad conduct discharge (BCD). On 1 June 1971, the Convening Authority suspended the portion of the sentence of confinement in excess of four months, forfeitures in excess of two months was suspended for the period of confinement and eight months thereafter, unless the suspension was sooner vacated. On 19 August 1971, Petitioner received non-judicial punishment (NJP) for an unauthorized absence totaling two days. On 18 October 1971, Petitioner again received NJP for an unauthorized absence. The record reflect on 5 November 1971, Petitioner commenced a period of unauthorized absence that concluded on 11 December 1971, totaling 36 days. Subsequently, as a result of Petitioner's continued misconduct, the suspended portion of the sentence relating to the BCD was vacated, and on 6 January 1972, Petitioner was discharged from the Marine Corps with a BCD.

d. Petitioner contends that: (a) his post-traumatic stress disorder (PTSD) was not recognized as a disability during the time he served in the Marine Corps; (b) the events that led to his punitive discharge were the direct results of a traumatic experience that occurred in a combat situation while serving in [REDACTED]; (c) that experience plunged him into a life of drugs and alcohol abuse and he developed a behavior that eventually led to his court-martial; (d) his body bares the burden of Agent Orange exposure and his health has deteriorated because of it as well; and (e) he was exposed to asbestos aboard ships and consumed contaminated water while at [REDACTED]

e. 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 that there is no evidence that Petitioner was diagnosed with a mental health condition in military service, although there is evidence of combat exposure. Throughout Petitioner's disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, the Petitioner has provided medical evidence of a diagnosis of PTSD attributed to [REDACTED] combat service. Petitioner's misconduct does follow his return from his combat deployment and could be considered unrecognized PTSD symptoms of irritability, hyper-arousal, and avoidance. The AO concluded by opining that there is post-service evidence that the Petitioner may have incurred PTSD during his military service. Additionally, there is post service evidence that Petitioner's misconduct could be attributed to PTSD.

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CONCLUSION:

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

The Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition, which mitigated but did not excuse Petitioner's misconduct that subsequently resulted in his unfavorable characterization of service discharge. In this regard, the Board concluded Petitioner's characterization of service shall be changed to "Honorable."

Additionally, in the interest of justice and in light of the potential for future negative implications, the Board further determined that Petitioner's separation authority shall be changed to "MARCORSEPMAN 6012.1F," and narrative reason for separation changed to "Convenience of the Government – When directed by the Secretary of the Navy Box 9c – MARCORSEPMAN 300."

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 6 January 1972, Petitioner was discharged with an "Honorable" characterization of service, separation authority was "MARCORSEPMAN 6012.1F," and narrative reason for separation was "Convenience of the Government – When directed by the Secretary of the Navy Box 9c – MARCORSEPMAN 300."

No further action be granted.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

3/2/2022

[REDACTED]

Executive Director

[REDACTED]