



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

██████████
Docket No: 2975-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 discharge be upgraded. Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 12 August 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, applicable statutes, regulations, and policies, to include the references.

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 14 February 1969. On 6 February 1970, following an unauthorized absence (UA) from 16 August 1969 through 2 October 1970, he received nonjudicial punishment (NJP) for a violation of Article 86 (UA). He received a second NJP, on 3 April 1970, for two specifications of Article 134 for drunk and disorderly behavior by wrongfully and willfully discharging his rifle at the rifle range when it was closed, under circumstances such as to endanger life.

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c. Petitioner deployed to the Republic of [REDACTED] and, on 5 May 1970, was wounded in action by fragmentation debris which lacerated his right eye. He was awarded the Purple Heart Medal and sent as an inpatient to Naval Hospital [REDACTED], on 25 May 1970, pending review of his injuries by a Medical Board (MB). Petitioner's MB reported its findings in July of 1970, recommending that he be retained in a limited duty status pending reevaluation in January of 1971. Petitioner commenced a period of UA from a convalescent status on 27 July 1970, which did not end until he was apprehended and returned to military authorities. Additionally, during Petitioner's UA and his status as a declared deserter, his family was mailed a notice of his eligibility to apply for consideration under the Presidential Clemency Program to receive an undesirable discharge with the issue of a Clemency Discharge upon completion of 24 months of alternative service promoting the national health, safety, or interest.

d. Following his return, Petitioner was charged with a single violation of Article 86 for the entirety of his period of UA. After being issued warnings regarding his rights under Article 31, he elected to request discharged for the good of the service. In addition to his 4-page personal statement, Petitioner included seven supporting letters with his separation request to document the mitigating reasons of his period of UA and need for separation. In endorsing Petitioner's separation request, his commanding officer recommended that he receive a discharge of General (Under Honorable Conditions) based on the extenuating factors that contributed to his UA, to include that he absented himself during a period of convalescent leave while pending a medical board following a combat-incurred injury. However, Commanding General, [REDACTED] Marine Division, approved Petitioner's request for discharge under Other Than Honorable conditions, and he was discharged, on 12 March 1976, with final proficiency and conduct marks of 4.4/2.8 respectively.

e. Petitioner contends various circumstances of his discharge resulting in injustice, to include: that, in advising him to request a discharge for the good of the service, his commanding officer expressed an expectation that he would receive a "good discharge"; that he did not understand the long-term future consequences of his request in receiving an undesirable discharge; that he never met with the officer appointed to investigate his charges; that his discharge is an injustice in light of his combat experience and injury during [REDACTED]; and, that his post-discharge matters in clemency reflect a lengthy history of public service and good character meriting an upgrade of his discharge.

f. In support of his contentions of post-discharge character, rehabilitation, and accomplishments, Petitioner submitted considerable evidence of his employment history with the [REDACTED] as an ambulance driver, emergency medical technician, water resource officer, process server, police officer, and counselor for adolescent and adult chemical dependency. Petitioner also provided evidence of his certification as a Chemical Dependency Specialist I, II, and III following extensive academic and training efforts towards those certifications. He also submitted character letters attesting to his community service as a health worker in enrolling the disable and elderly for food distribution services, in assisting the Tribes Housing with building and renovation of facilities, in performing as a laborer for the Road Department, in serving as a security guard for the Indian Health Service, and in progressively higher positions of

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responsibility as part of the Tribal elections process to include acting as commissioner, judge, and assistance supervisor of elections.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of relief. The Board reviewed the application under the policy guidance provided in the references.

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board considered the totality of Petitioner's favorable evidence in support of his request for clemency and concurred with his contentions regarding his extensive history of public service to the [REDACTED] community. To this extent, the Board found it compelling that Petitioner's post-service conduct over the past 46 years not only demonstrates his ongoing and selfless commitment to others but strongly reinforces the truth of his original contentions of mitigating factors at the time of his pending separation request – factors which his commanding officer found sufficient at the time to recommend discharge under honorable conditions and which the Board notes are substantially more persuasive today when balanced against his clear dedication to serving the needs of his community in a multitude of capacities. In light of the foregoing considerations, the Board found that the totality of matters in support of clemency substantially outweighed the misconduct which resulted in Petitioner's punitive discharge and merited recognition of his honorable service. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief and upgrade Petitioner's discharge characterization to Honorable.

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 Certificate of Release or Discharge from Active Duty (DD Form 214) indicating for the period ending on 12 March 1976, an "Honorable" discharge was issued.

That Petitioner be issued an "Honorable" discharge certificate.

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

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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.

8/31/2022

[REDACTED]

Executive Director

Signed by [REDACTED]