



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: 6067-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF ■■■■■
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Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 18 Oct 22

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 for an upgrade of his characterization of service.

2. The Board, consisting of ■■■■■ reviewed Petitioner's allegations of error and injustice on 9 November 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 references (b) through (d). Additionally, the Board considered an 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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 23 March 1966. Petitioner participated in numerous named combat operation in the Republic of ■■■■■ from 29 November 1966 to 9 December 1976.

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[REDACTED]

d. During the period from 5 June 1968 to 1 August 1968, Petitioner received three instances of non-judicial punishment (NJP). His offenses were two periods of unauthorized absence (UA) and absence from his appointed place of duty.

e. On 8 January 1969, Petitioner was convicted by a special court-martial (SPCM) of three specifications of UA totaling 87 days, failure to obey a lawful order and escaping from confinement. Petitioner was sentenced to confinement, forfeiture of pay, reduction in rank, and a bad conduct discharge (BCD). The convening authority suspended the portion of the sentence that provides for the BCD for the period of confinement and six months thereafter, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

f. On 21 November 1969, Petitioner received his fourth NJP for absence from his appointed place of duty.

g. On 28 January 1970, Petitioner was convicted by a summary court-martial (SCM) of wrongfully appropriating a government vehicle.

h. On 25 February 1970, Petitioner received his fifth NJP for two specifications of UA.

i. On 2 March 1970, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

j. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Marine Corps. On 5 May 1970, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

k. On 27 February 1973, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, based on their determination that Petitioner's discharge was proper as issued. Petitioner applied to the Department of Defense Discharge Review Program (Special) (SDRP) requesting for a discharge upgrade, and on 5 July 1977, the SDRP reviewed Petitioner's application and found that Petitioner's application meets the primary criteria of the Special Program and granted Petitioner relief in the form of upgrading the characterization of service to General (Under Honorable Conditions).

l. On 7 November 2012, this Board reviewed Petitioner's application request for an upgrade of his character of service and he was denied relief.

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m. Petitioner contends that he was suffering from PTSD during his service which might have mitigated the circumstances of his discharge. Petitioner asserts that during his tour in [REDACTED] he was exposed to numerous enemy rocket, mortar and small arms attacks. Although he was a mechanic, he was stationed on firebases that included [REDACTED] and the [REDACTED] Combat Base. Until he returned from [REDACTED] he was a good Marine and had no disciplinary actions against him.

n. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

Evidence submitted indicates inpatient and outpatient hospitalization services from 2002-2021 for the treatment of PTSD. All records point to the veteran's deployment to Vietnam as being the cause of his PTSD. The VSO's letter describes a highly kinetic deployment with multiple traumatic events having occurred to include witnessing fellow Marine's deaths. Per the evidence submitted, the Petitioner meets all criteria for PTSD and it is likely that his PTSD diagnosis can be attributed to his deployment. His repetitive unauthorized absences following his deployment could be an indication of avoidance of certain images, events, places, etc. as characterized by PTSD. Wrongful appropriation of a government vehicle as well as escaping confinement aren't necessarily typical behaviors characteristic of PTSD, however details of these offenses are also not available within his service record.

The AO concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence the circumstances of his separation could be attributed to PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's OTH discharge and subsequent discharge upgrade to General (Under Honorable Conditions). However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (d).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service, and there is evidence the circumstances of his separation could be attributed to PTSD. The Board found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged and, therefore, the interests of justice are served by upgrading his characterization of service Honorable.

Although not specifically requested by the Petitioner, the Board also determined that Petitioner's narrative reason for separation and separation authority should be changed in the interests of

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justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

RECOMMENDATION:

In view of the above, 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 character of service was "Honorable," the narrative reason for separation was "Convenience of the Government – When directed by the Secretary of the Navy Box 9c – MARCORSEPMAN 300," and the separation authority was "MARCORPERSMAN 6012.1g."

That Petitioner be issued an honorable discharge certificate.

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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 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.

12/4/2022

[REDACTED]
Executive Director
[REDACTED]