



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

SJN
Docket No: 1100-14
5 February 2015

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

Subj: REVIEW NAVAL RECORD OF EX-PVT [REDACTED] 5 U.S.C 552(b) (6)
[REDACTED] 5 U.S.C 552(b) (6)

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his other than honorable discharge be changed to general.

2. The Board, consisting of [REDACTED] 5 U.S.C 552(b) (6) and [REDACTED] 5 U.S.C 552(b) (6), reviewed Petitioner's allegations of error and injustice on 4 February 2015 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

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 waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 15 March 1967. On 4 January 1968, he received nonjudicial punishment (NJP) for disobedience. On 1 December 1969, he received a second NJP for 30 days of unauthorized absence (UA), ending in apprehension. On 13 April 1970, he was convicted by special court-martial (SPCM) of 57 days of UA, ending in apprehension. On 20 August 1970, he submitted a written request for a good of the service discharge in order to avoid trial by court-martial for 80 days of

UA, ending in apprehension, going from his appointed place of duty, two specifications of assault, drunk and disorderly conduct, and wrongful possession of marijuana. Prior to submitting his request for discharge, he conferred with a qualified military lawyer, was advised of his rights, and was warned of the probable adverse consequences of accepting such a discharge. His request for discharge was granted and on 18 September 1970, he received an other than honorable discharge for the good of the service in lieu of trial by court-martial. As a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

d. In his application, Petitioner states that he served in Vietnam for over a year, and that his unit was heavily engaged in combat activities. He also saw a lot of death, bloodshed, and shortly after returning from Vietnam struggled to adjust. He submits a 14 page Veteran Information Form with progress notes that assessed his claim of Post-Traumatic Stress Disorder (PTSD). The counselor's comments state, in part, that he has symptoms consistent with PTSD.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. In this regard, based upon his record of service, to include Vietnam combat service, relief in the form of his characterization of service should be changed to general. The Board noted that the Petitioner provided a detailed medical history and PTSD diagnosis from a licensed clinical social worker. This evidence led the Board to reasonably conclude that the PTSD condition was caused by traumatic service connected events and existed at the time of his discharge. In addition, the fact that the Petitioner did not engage in misconduct until after the traumatic incidents that led to his PTSD was persuasive to the Board and led them to conclude that the PTSD was a causative factor in the misconduct that led to the Petitioner's discharge. Finally, after carefully considering all the evidence, the Board felt that the Petitioner's diagnosed PTSD should mitigate the misconduct he committed while on active duty since the PTSD condition outweighed the severity of the misconduct. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 18 September 1970, he received a "general discharge" vice discharge under other than honorable conditions.

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

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 25 September 2013.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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 U.S.C 552(b) (6)

T. J. REED
Recorder

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.

5 U.S.C 552(b) (6)

ROBERT J. O'NEILL
Executive director