



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

Docket No: 6898-16

DEC 04 2017

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USMC,  
XXX-XX [REDACTED]

- Ref: (a) 10 U.S.C. §1552  
(b) SECDEF Memo of 3 Sep 14 "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD"  
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"  
(d) PDUSD Memo of 25 Aug 17 "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"

- Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Post-service PTSD diagnosis dated 7 May 16  
(4) Subject's naval record (excerpts)  
(5) BUMED memo 5740 Ser M34/17UM34348 dtd 30 Oct 17

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his other than honorable (OTH) characterization of service be changed in light of current guidelines as reflected in references (b), (c) and (d). Enclosures (1) through (5) apply.

2. The Board consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 November 2017 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, relevant portions of Petitioner's naval records, applicable statutes, regulations, policies, post-service PTSD diagnosis, and an advisory opinion (AO) provided by Navy Bureau of Medicine and Surgery (BUMED).

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. Petitioner enlisted in the Marine Corps on 9 September 1993. Petitioner was assigned to the [REDACTED] On 4 May 1995, Petitioner reports that his best friend was murdered as a result of being knifed in the chest in the cargo hold of the ship.

c. During the period from 7 August 1995 to 30 May 1996, he received two non-judicial punishments (NJP) for the following offenses: two specifications of disrespect toward an NCO, disrespect toward a commissioned officer, and two specifications of disobeying a lawful order. He was also convicted by a summary court martial (SCM) of unauthorized absence totaling 37 days. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to minor infractions. After he consulted with counsel and waived his procedural rights, his Commanding Officer recommended discharge under other than honorable (OTH) conditions by reason of misconduct due to minor infractions. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct. On 4 October 1996, he was discharged.

d. Petitioner submitted enclosure (3), dated 7 May 2016, as evidence of a post-service diagnosis of PTSD.

e. On 3 August 2016, Petitioner requested consideration of his case based on an assertion of an undiagnosed and untreated service connected PTSD. Based on current BCNR policy and guidance, the Board requested an advisory opinion from BUMED, the office having cognizance over the subject matter, attached as enclosure (5). The advisory opinion has commented that the request has merit and warrants favorable action. See enclosure (5).

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (5), the Board concludes that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in references (b), (c) and (d). Specifically, the Board considered whether his application was the type that was intended to be covered by this policy.

The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The memoranda further explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge. In this regard, based upon his record of service, to include an in-service diagnosis of PTSD, relief in the form of his characterization of service should be changed to general under honorable

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conditions.

The Board notes Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in his post-service and in-service PTSD diagnosis. The Board was able to reasonably conclude that the PTSD condition was service connected, existed at the time of his misconduct, and subsequently resulted in his other than honorable discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. With that being determined, the Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been other than honorable, and re-characterization to a general discharge is now more appropriate. In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's Naval record be corrected to show that he was issued a general discharge on 4 October 1996, vice the other than honorable discharge actually issued on that day.

That Petitioner is issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215).

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

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 3 August 2016.

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.

[REDACTED]

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.

[REDACTED]

Executive director