



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

[REDACTED]
Docket No: 7339-16
JUL 06 2017

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

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

Ref: (a) 10 U.S.C. 1552
(b) SECDEF Memo of 3 Sep 14

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) BUMED Advisory Opinion Ser M34/16UM36068 ltr dtd 1 May 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 the characterization of his other than honorable (OTH) discharge be changed in light of current guidelines as reflected in reference (b). Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 May 2017 and, pursuant to its regulations, a majority determined that the partial 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. In addition, the Board considered the advisory opinion (AO) furnished by the Bureau of Medicine and Surgery, dated 1 May 2017.

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 U.S. Marine Corps and began a period of active duty on 24 August 1966. He received nonjudicial punishment (NJP) on 30 December 1966 for unauthorized absence (UA) totaling 12 days. He participated in 16 named combat operations in the Republic of Vietnam (RVN) during the period from 23 March 1967 to 6 April 1968. During his deployment in RVN, he received NJP on 26 June 1967 for UA totaling one day.

d. Upon returning from Vietnam in April 1968, Petitioner began a series of periods of UA

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beginning 10 May 1968. On 6 December 1968, he was convicted by special court-martial (SPCM) of four periods of UA totaling 161 days. He was sentenced to confinement, forfeiture of pay, reduction in paygrade, and a bad conduct discharge (BCD). During confinement the Petitioner was the subject of a psychiatric evaluation where he was diagnosed with a passive dependent personality and severe drug usage. Subsequently, the BCD was approved at all levels of review and he was discharged on 25 April 1969.

e. On 26 May 2015, the [REDACTED] Vet Center, diagnosed the Petitioner with PTSD.

f. Enclosure (4), an advisory opinion (AO) furnished by the Bureau of Medicine and Surgery (BUMED), stated in part that during his enlistment in the Marine Corps the Petitioner served 13 months in Vietnam. His medical records show symptoms of insomnia, anxiety, avoidance of crowds, nightmares, difficulties with interpersonal relationships, and drug use. He was diagnosed with passive dependent personality. In 2015 a psychological report concluded Petitioner suffers from symptoms of combat related PTSD. The record clearly shows that the Petitioner was exposed to multiple combat related traumatic events. His judgment, behaviors and emotional stability all changed immediately after his combat experiences as evidence by the UAs, drug use, and the Neuropsychiatric report from January 1969. Based on the preponderance of the evidence, it is the considered medical opinion that the Petitioner suffered from a mental health condition at the time of service that interfered with his judgment and led to a bad conduct discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The panel reviewed his application under the guidance provided in reference (b), Secretary of Defense Memorandum of 3 September 2014, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD." Specifically, the panel 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 memorandum 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, the Board initially 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 medical and/or mental history documentation, psychological evaluation of PTSD, and the BUMED AO. Further, the Board concluded that the PTSD was a causative factor in Petitioner's misconduct; this evidence led the Board to reasonably conclude that the PTSD condition existed at the time of

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his discharge, and subsequently resulted in his bad conduct discharge. After carefully considering all the evidence, the Board decided that Petitioner's diagnosed PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct.

The Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as bad conduct, and recharacterization to a under honorable conditions (general) characterization of service is now more appropriate. Further the Board considered the Petitioner's combat service, proficiency and conduct marks, and his following awards: National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal, Presidential Unit Citation, Purple Heart Medal with gold star.

In view of the forgoing the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected to show that on 25 April 1969, Petitioner was discharged with a "general, under honorable conditions" character of service.

That Petitioner be issued a new DD Form 214.

That a copy of this Report of Proceedings should 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 17 August 2016.

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 presented 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