



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

[REDACTED]
Docket No. 7340-16
DEC 04 2017

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

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

Ref: (a) Title 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) SECDEF Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Board 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 w/attachments
(2) Case summary
(3) BUMED ltr 5740 Ser M34/17UM34347 of 30 Oct 17
(4) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, filed enclosure (1) with this Board requesting, in effect, that his other than honorable discharge be changed to an honorable discharge. Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 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 Petitioner's application, together with all material submitted in support thereof, relevant portions of Petitioner's naval record and applicable statutes, regulations and policies. In addition, the Board considered enclosure (3), which was furnished by the 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. Enclosure (1) was filed in a timely manner, within three years of the guidance granting causes of action regarding PTSD claims at the BCNR.

c. Petitioner enlisted in the Marine Corps, began a period of active duty on 2 September 1989. He participated in Operation Desert Shield/Desert Storm during the period from 17 January 1991 to 5 April 1991 where he was exposed to other Marines killed in action (including one friendly fire incident) and handled body parts.

d. On 12 November 1991, Petitioner submitted a written request for a discharge in lieu of trial by court-martial for unauthorized absence totaling 123 days. Prior to submitting this request he was counseled by a qualified military lawyer.

e. Petitioner was discharged with an other than honorable conditions characterization of service on 23 December 1991.

f. On 24 March 2017, Petitioner underwent an evaluation at the Veteran Affairs Medical Center in [REDACTED] and was diagnosed with Post Traumatic Stress Disorder (PTSD).

g. Based on current BCNR policy and guidance, the Board requested an advisory opinion from BUMED, the office having cognizance over the subject matter. The advisory opinion states that the request has merit and warrants favorable action. See enclosure (3).

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of enclosure (2) and (3), the Board concludes that Petitioner's request warrants relief. 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 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, based upon Petitioner's record of service, including the Petitioner experiencing several traumatic events, diagnosis of PTSD and in accordance with the advisory opinion, relief in the form of an upgrade to the characterization of service should be granted.

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 military record prior to deployment for Iraq combat operations and his subsequent period of misconduct upon return from deployment. The Petitioner's assertion of PTSD was supported with a medical diagnosis

and the Board concluded that the time spent in Iraq was a causative factor in Petitioner's misconduct. The Board was able to reasonably conclude that the PTSD condition 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 under other than honorable conditions, and re-characterization to an honorable 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 received an Honorable discharge on 23 December 1991, vice the under other than honorable conditions discharge actually issued on that day.

That Petitioner be issued a new Certificate of Release or Discharge from Active duty (DD Form 214).

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 17 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 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.

[REDACTED]

Executive Director