



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

[REDACTED]  
Docket No: 7341-16

DEC 07 2017

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

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

- 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) BUMED ltr 5740 Ser M34/17UM34185 dtd 5 Jun 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 discharge characterization of service be upgraded from other than honorable to honorable in light of current guidelines as reflected in references (b), (c) and (d), and his substantial history of combat, hospitalizations, and multiple concussive events.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 September 2017, and, pursuant to its regulations, determined 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 portion of Petitioner's naval records, applicable statutes, regulations, policies, and the advisory opinion (AO) provided by BUMED. Enclosures (1) through (3) apply.

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

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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 9 May 1968. During the timeframe from 9 May 1968 to 9 April 1969, Petitioner served in combat operations against the Viet Cong in the vicinity of the Quang Tri province in the Republic of Vietnam. In February 1969, Petitioner suffered a shrapnel wound to his left ankle during a firefight.

d. On 9 April 1970, Petitioner received nonjudicial punishment (NJP) for a 5.5 hour unauthorized absence (UA). Between 16 September 1970 and 5 November 1970, Petitioner received NJP on four additional occasions for two UA periods of one day and 1.5 days, wearing a utility jacket over his civilian clothes when off-base, disrespect toward an officer, and failure to go to his appointed place of duty. On 10 November 1970, Petitioner was convicted by summary court-martial (SCM) for failure to go to his appointed place of duty. On 27 September 1971, Petitioner received his sixth NJP for sleeping on post while on guard duty. Subsequently, Petitioner started an unauthorized absence (UA) on 26 October 1971 which lasted until 7 December 1971.

e. Subsequently, in January 1972, Petitioner submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for uttering worthless checks, assault, a 41-day UA period, wrongfully impersonating a noncommissioned officer (NCO), and wrongfully communicating a threat toward an NCO. Prior to submitting this request for discharge, he conferred with a qualified military lawyer, was advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, his request for discharge was granted, and on 19 January 1972, Petitioner received an undesirable discharge in lieu of trial by court-martial.

f. Petitioner's medical records reflected several injuries incurred by Petitioner. In February 1969, he suffered a shrapnel wound to his left ankle during a firefight in which the enemy attempted to overrun his firebase. In April 1971, he was in a military jeep accident during training which resulted in a diagnosis of Post Concussive Syndrome. On 12 July 1971, finger injuries caused by physical altercations in April and June 1971 were documented. On 6 August 1971, Petitioner suffered a head injury from being hit in the head with an e-tool.

g. Based on current Board policy and guidance, the Board requested an AO from BUMED, the office having cognizance over the subject matter. The AO has commented to the effect that Petitioner suffered from a mental health condition at the time of service that interfered with his judgment and led to an undesirable discharge. Although there were "no in-service or post-service medical notes which described symptoms of PTSD", for almost two years, he served with no disciplinary actions; his first was about a year after leaving Vietnam. "His misconduct clearly began after his experiences in Vietnam. Records indicate Petitioner had several altercations and was verbally disrespectful to superiors. This sign of irritability would be consistent with either

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PTSD or a traumatic brain injury. Job performance scores were erratic moving up and down depending upon his misconduct." See enclosure (3).

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b), (c) and (d), and enclosure (3), the Board concluded Petitioner's request warrants partial relief.

The Board determined an upgrade to Petitioner's characterization of service from other than honorable to general, under honorable conditions, is warranted based on the impact PTSD likely had on his misconduct. The Board noted his misconduct occurred after completion of his combat tour in the Republic of Vietnam. The Board concurred with BUMED's opinion that Petitioner suffered from a mental health condition at the time of service which interfered with his judgment. The Board concluded that, in consideration of Petitioner's mental health condition and as a matter of justice, Petitioner's discharge should be upgraded to general, under honorable conditions.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following partial corrective action.

Petitioner's naval record be corrected to show he received a general, under honorable conditions, characterization of service on 19 January 1972.

Petitioner shall be issued a new DD Form 214.

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

Upon request, the Department of Veterans Affairs be informed that the 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

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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