



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

[REDACTED]
Docket No: 8574-16
OCT 09 2017

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

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

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

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to place him on the Permanent Disability Retirement List and Combat Related Special Compensation (CRSC). In the alternative, he requested to have his narrative reason for separation changed and an upgrade to his characterization of service. This case was reconsidered in accordance with procedures that conform to *Lipsman v. Secretary of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004). Petitioner was previously denied relief by the Board on 19 April 2012.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 September 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, naval records, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion contained in Senior Medical Advisor, Secretary of the Navy Council of Review Boards ltr 1910 CORB: 002 of 24 Jul 2017 and the endorsement contained in Director CORB ltr 1910 CORB: 001 of 24 Jul 2017; copies of which were provided to you for comment.

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 entered active duty with the Marine Corps in March 1966. Originally assigned to [REDACTED] he was involved in a number of incidents of misconduct between September 1966 and June 1967 that resulted in the imposition of multiple non-judicial punishments. He was eventually transferred off [REDACTED] and deployed to the Republic of Vietnam in 1968.

c. Petitioner was involved in at least five named operations while in Vietnam, including the Defense of Khe Sanh, between 1 March 1968 and 19 April 1968. However, he suffered a seizure on 6 May 1968 that led to his eventual transfer to the Naval Hospital in [REDACTED] for treatment.

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d. On 13 May 1968, Petitioner was diagnosed with a single seizure of unknown etiology and emotional personality disorder. He was found unsuitable for continued service due to an emotionally unstable personality that existed prior to his entry into the Marine Corps.

e. Petitioner was discharged with a General Characterization of service due to his personality disorder on 5 August 1968. In January 2011, the Department of Veterans Affairs determined that Petitioner suffered from Post-Traumatic Stress Disorder due his service in Vietnam that aggravated his personality issues.

f. Senior Medical Advisor, Secretary of the Navy Council of Review Boards provided an advisory opinion recommending no relief. He opined that Petitioner's pre-service history supports the finding made by the Navy regarding the existence of a personality disorder. In addition, the opinion states that there was no evidence Petitioner's seizure was unfitting based on the single incident. Director CORB positively endorsed the advisory opinion and added that Petitioner's post-discharge employment with his family restaurant indicated he was not suffering from an occupational impairment significant enough to support a finding of unfitness.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action.

The Board concluded that there was sufficient evidence to support a change to the narrative reason for separation due to an injustice. The Board agreed with Petitioner's argument that Petitioner's record was devoid of any evidence he was unsuitable for continued naval service due to a personality disorder at the time of his discharge. His history of documented misconduct ended prior to his transfer from [REDACTED] and, by all accounts, he served his short tour in Vietnam honorably until his single seizure episode. So while there was ample evidence the Petitioner qualified for a misconduct discharge, the Board felt the record did not support one for a personality disorder. Based on this finding, the Board concluded a change to Petitioner's narrative reason for separation should be made to Secretarial Authority.

Despite the Board decision to recommend changing the narrative reason for separation to Secretarial Authority, the Board determined Petitioner's characterization of service remains appropriate. While Petitioner's history of misconduct is primarily based on minor incidents that ended upon his transfer to a combat unit, it was still a significant amount in light of the relatively brief period of active duty performed by the Petitioner. In the end, the Board felt significant aspects of Petitioner's service while attached to [REDACTED] outweighed the positive aspects of his latter service in Vietnam. Petitioner's history of misconduct was sufficient evidence for the Board to recommend no change to his characterization of service.

Regarding the request for placement on the Permanent Disability Retirement List, the Board concluded the evidence did not support such relief. As argued by the Petitioner, there was no evidence supporting a finding that he was not performing his duties or unable to perform his duties due to a personality disorder. The symptoms that led to the personality disorder diagnosis are the same ones relied upon by the Petitioner in asserting the existence of PTSD. The Board determined that the Petitioner should not have it both ways and be able to argue that he was

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improperly separated for a personality disorder, due to lack of evidence of unsuitability, while arguing he was unfit for continued naval service for the same symptoms. In the end, the Board substantially concurred with the medical opinion provided in the advisory opinion in determining there was insufficient evidence to support a finding of unfitness for continued naval service due to PTSD.

Finally, on the issue of CRSC, the Board concluded that Petitioner did not qualify since he is not retired from the Marine Corps and the Board did not recommend his placement on any retirement list.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner was separated due to "secretarial authority" on 5 August 1968 with SPD code "JFF" and RE Code "RE-1." No other change is required.

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

4. It is certified that 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]

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