



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

[REDACTED]
Docket No: 822-17
FEB 01 2018

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) Subject's naval record (excerpts)
(4) BUMED memo Ser M34/17UM34300 dtd 29 Aug 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 bad conduct discharge (BCD) characterization of service be changed in light of current guidelines as reflected in references (b) and (c). Enclosures (1) through (4) apply.

2. The Board consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 9 January 2018, 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, applicable statutes, regulations, policies, 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:

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- 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 Marine Corps on 28 June 1971. During the period from 25 April to 11 July 1972, he received non-judicial punishment (NJP) for failure to obey a lawful order. He was also convicted by summary court martial (SCM) of unauthorized absent (UA) and missing ship's movement. On 31 October 1973, he was convicted by special court martial (SPCM) of the following offenses: conspiring to assault, unlawful assembling, and three specifications of assault. He was sentenced to confinement for five months, reduction to E-1, forfeiture of pay, and a BCD. After the BCD was approved at all levels of review, on 29 April 1975, he was discharged.
- d. On 26 January 2017, Petitioner requested consideration of his case based on an assertion of an undiagnosed and untreated service connected PTSD. Petitioner was provided an advisory opinion from BUMED, the office having cognizance over the subject matter, attached as enclosure (4). The advisory opinion has commented to the effect that the request has merit and warrant favorable action. See enclosure (4).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3) and (4), the Board concludes that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in references (b) and (c). 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 his record of service, to include the AO dated 29 August 2017, relief in the form of his characterization of service should be changed to general under honorable 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 the AO. The Board was able to reasonably conclude that the PTSD condition existed at the time of his misconduct, and subsequently resulted in his BCD 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

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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:

- a. That Petitioner's Naval record be corrected to show that he was issued a general discharge on 29 April 1975, vice the BCD discharge actually issued on that day.
 - b. That Petitioner is issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215).
 - c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
 - d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 26 January 2017.
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