



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

[REDACTED]  
Docket No. 5983-17  
MAR 01 2018

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

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

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) 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) Post-service PTSD diagnoses  
(4) Subject's naval record (excerpts)  
(5) BCNR medical AO dtd 8 Dec 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 under other than honorable (OTH) characterization of service be changed in light of current guidelines as reflected in references (b) through (d). Enclosures (1) through (5) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 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, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies, post-service PTSD diagnoses, and an internal advisory opinion (AO).

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 Marine Corps on 1 May 2001.
- d. On 3 December 2001, Petitioner received an Administrative Remarks (Page 11) counseling for underage drinking.
- e. During the period from 26 January to 24 July 2003, Petitioner deployed in support of Operation Iraqi Freedom where he earned the Combat Action Ribbon and the Navy Achievement Medal with Combat Distinguishing Device.
- f. On 29 October 2003, Petitioner received an Administrative Remarks (Page 11) counseling for an alcohol related incident.
- g. During the period from 31 January to 4 April 2004, Petitioner deployed in support of Operation Iraqi Freedom.
- h. On 4 October 2004, Petitioner was convicted at summary court-martial for two specifications of disobeying a lawful order and drunken or reckless operation of a vehicle. On 9 December 2004, Petitioner received nonjudicial punishment for wrongful use of a controlled substance (cocaine).
- i. On 10 January 2005, Petitioner refused treatment for his alcohol abuse.
- j. On 18 January 2005, Petitioner was notified of proposed administrative separation processing by reason of misconduct due to drug abuse and a pattern of misconduct. He consulted counsel and waived his right to an administrative discharge board. Petitioner's commanding officer recommended an other than honorable (OTH) character of service by reason of misconduct due to a pattern of misconduct. On 25 February 2005, the separation authority directed an OTH character of service by reason of misconduct due to drug abuse and pattern of misconduct. On 1 March 2005, Petitioner was discharged.
- k. Petitioner has several post-service diagnoses of PTSD starting on 4 June 2007, including a diagnosis from the Department of Veterans Affairs. Additionally, an internal advisory opinion from a qualified medical professional has commented to the effect that the request has merit and warrants favorable action. See enclosure (5).
- l. References (b) through (d) set forth the Secretary of Defense current policies, standards, and procedures 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.

## CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of references (b) though (d) and post-service diagnoses of PTSD, the Board concludes that Petitioner's request warrants partial relief. The Board notes Petitioner's misconduct and does not condone his actions. However, the Board was able to reasonably conclude that the Petitioner's PTSD condition existed at the time of his misconduct, and subsequently resulted in his OTH 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. As a result of the abovementioned, the Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as having been OTH, and re-characterization to a General (Under Honorable Conditions) is now more appropriate.

In view of the above, the Board directs the following corrective action.

## RECOMMENDATION

That Petitioner's Naval record be corrected to show that he was issued a general (under honorable conditions) character of service on 1 March 2005, vice the OTH discharge actually issued on that day.

That Petitioner is 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 10 July 2017.

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]

Recorder

5. 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 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]

Executive Director