



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

[REDACTED]
Docket No: 6780-17/
MAR 29 2018 4431-16

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[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 (NR20170006780)
(2) DD Form 149 (NR20100004431)
(3) Case summary
(4) Department of the Navy Bureau of Medicine and Surgery Advisory Opinion 5740
SER M34/18UM34101

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) for reconsideration and seeking an upgrade to his other than honorable discharge characterization. Petitioner previously petitioned the Board and was advised in our letter of 16 November 2016, that his applications had been denied. Enclosure (2). Petitioner's case was reconsidered in accordance with Board of Correction of Naval Records procedures that conform to Lipsman v. Secretary of the Army, 335 F.Supp.2d 48 (D.D.C. 2004).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 5 February 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 his naval service records, and applicable statutes, regulations, and policies.

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 review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 3 June 1997. He completed his first period of required active duty service honorably on 24 January 2001, and reenlisted. During his second period of enlistment, Petitioner deployed to Iraq in support of Operation Iraqi Freedom.

d. Petitioner states that during his deployment he was under frequent enemy fire, and states that in February 2005, he was involved in a rocket attack that killed two Iraqi soldiers accompanying his team.

e. On 10 March 2004, Petitioner received nonjudicial punishment (NJP) for provoking speeches, assault and communicating a threat. His appeal of the NJP was denied. On 22 August 2006, at summary court martial proceedings, Petitioner was found guilty of adultery.

f. On 5 October 2006, Marine and Family Services recommended that Petitioner be evaluated for numerous signs of combat stress.

g. On 23 October 2006, Petitioner received NJP for disobeying a lawful order from a superior commissioned officer, disrespect, and communicating a threat.

h. On 25 October 2006, Commanding Officer, [REDACTED] Low Altitude Air Defense Battalion initiated administrative separation proceedings against Petitioner on the basis of a pattern of misconduct. On 18 December 2006, Commanding General, [REDACTED] Marine Aircraft Wing endorsed Petitioner's separation on the basis of a pattern of misconduct and recommended an other than honorable characterization of service.

i. Petitioner was discharged from the Marine Corps on 11 January 2007, on the basis of misconduct, and received an other than honorable characterization of service and a reentry (RE) code of RE-4. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) notes Petitioner's period of continuous honorable service from 3 June 1997 through 24 January 2001.

j. As part of the review process, Bureau of Medicine and Surgery (BUMED) reviewed Petitioner's assertions and the available records, and issued a favorable Advisory Opinion (AO) dated 2 January 2018, concluding that Petitioner suffered from a mental health condition at the time of service that interfered with his judgment and led to an undesirable discharge. Enclosure (4). As part of the AO review process, BUMED noted that in 2014, Petitioner was diagnosed by the Veteran's Administration (VA) with Traumatic Brain Injury (TBI). In 2015, he was diagnosed by the VA with Post Traumatic Stress Disorder (PTSD).

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k. The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors, such as the Petitioner's contention that he suffered from PTSD and his assertions of unlawful command influence during his administrative discharge proceedings. Petitioner contends that five of the statements of support written by his supervisors were returned with disparaging comments and directed to be changed. Even in consideration of Petitioner's statement regarding unlawful command influence, the Board found that it had insufficient evidence to establish that Petitioner's administrative separation process was conducted contrary to law or regulation.

l. Petitioner's assertion of suffering from TBI/PTSD was fully and carefully considered by the Board in light of references (b)-(d). In accordance with current guidance, the Board gives liberal and special consideration to treatment documentation of PTSD symptoms and medical determinations of the existence of service-connected PTSD and TBI. The Board agreed with the AO, and determined that the information provided by Petitioner combined with combat operations reflected in his record was sufficient to establish that Petitioner suffered from PTSD which contributed to his misconduct. The Board found that Petitioner's PTSD mitigated the misconduct that occurred in his second enlistment.

m. The Board noted that Petitioner received a summary court martial and one NJP during his second enlistment. Even in consideration of the PTSD/TBI the Board found that the misconduct for which he was found guilty should be taken into consideration when determining the characterization of service. In light of his contributions in Iraq and in consideration of the mitigating factor of combat-connected PTSD/TBI, the Board found that Petitioner is entitled to relief, to include an upgrade to his discharge characterization from other than honorable to a general characterization of service.

CONCLUSION:

That Petitioner be granted relief with respect to a change to his discharge characterization to reflect an upgrade from other than honorable to general.

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

RECOMMENDATION:

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty to show he was discharged from the Marine Corps on 11 January 2011, with a general characterization of service.

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 18 July 2016.

4. 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

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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