



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

█
Docket No: 3069-19
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
XXX-XX-█, USMC

Ref: (a) 10 U.S.C. 1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 Sep 14
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 Feb 16
(d) USD Memo, "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," of 25 Aug 17
(e) USD memo of 25 Jul 18, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations"

Encl: (1) DD Form 149 (NR20190003069)
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that the characterization of his service be upgraded from other than honorable to general (under honorable conditions). Petitioner previously petitioned the Board in NR20020005793, but was denied relief on 11 March 2003. Petitioner's current request was reconsidered in accordance with Board procedures conforming to the requirements of *Lipsman v. Sec'y of the Army*, 335 F. Supp. 2d 48 (D.D.C. 2004).

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 20 July 2020, 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, applicable statutes, regulations, and policies, and an Advisory Opinion (AO) provided by a mental health professional.

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 the Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although Petitioner's request for reconsideration was not filed in a timely manner, the Board found it to be in the interests of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps at the age of 17, and began a period of active duty on 12 May 1969. He participated in multiple combat operations during deployment to the Republic of Vietnam from 17 December 1969 to 21 December 1970.

d. On 4 September 1970, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ). On 31 October 1970, a summary court martial convicted Petitioner for UA in violation of Article 86, UCMJ, and failure to obey a lawful order in violation of Article 92, UCMJ.

e. By memorandum dated 8 December 1970, Petitioner requested a discharge for the good of the service in lieu of trial by court-martial for a number of charges, including UA, disrespect, insubordination, two specifications of failure to obey a lawful order, resisting arrest, being drunk on duty, misbehavior as a sentinel, and communicating a threat. Petitioner was discharged from the Marine Corps on 8 January 1971 under conditions other than honorable, and was assigned a reentry code of RE-4.

f. In his current application, Petitioner asserts that he was formally diagnosed with Post Traumatic Stress Disorder (PTSD) in October 2003 and was awarded a service-connected disability rating of 50% from the Department of Veterans Affairs (VA) for PTSD on 1 February 2018. Petitioner states in his application that his "brain just went into a fog" after a firefight in the summer of 1970, but that he was always turned away from medical treatment.

g. As part of the review process, the BCNR Physician Advisor, who is a medical doctor and Fellow of the American Psychiatric Association, reviewed Petitioner's contentions and available records. Based upon this review, he issued an AO dated 10 May 2020 that was considered by the Board. The AO notes that even though the Petitioner's in-service medical records fail to provide any evidence of PTSD, his service record reflects participation in multiple combat operation and his personal statement describes combat-related psychological effects. The AO also noted that Petitioner's misconduct began toward the latter part of his combat deployment, after several of the combat operations cited in his record. The AO ultimately concluded that there is sufficient evidence that Petitioner likely incurred PTSD as a result of his combat-related military service, and that his PTSD may have mitigated his misconduct.

h. The Board applied references (b) through (e) in its review of Petitioner's application, and considered the conclusions of the AO.

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CONCLUSION:

The Board reviewed Petitioner's request in light of references (b) through (e), and considered his post-discharge diagnosis of PTSD, his service-connected disability rating from the VA, and the conclusions of the AO. The Board determined that Petitioner is entitled to liberal consideration and that he likely suffered from PTSD at the time of his misconduct. Accordingly, the Board determined that Petitioner is entitled to an upgrade to his service characterization from other than honorable to general.

The Board also determined that Petitioner's DD Form 214 should be corrected to reflect a general characterization of service.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 (Certificate of Release or Discharge from Active Duty) reflecting a characterization of service as General (under honorable conditions).

That, upon request, the VA be informed that Petitioner's application was received by the Board on 12 March 2019.

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.
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.

10/18/2020

[REDACTED]
Executive Director

Signed by: [REDACTED]