



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

[REDACTED]
Docket No. 8350-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED] 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 Post Traumatic Stress Disorder," 3 September 2014
 - (c) PDUSD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)," 24 February 2016
 - (d) USD (P&R) 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," 25 August 2017
 - (e) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

- Encl:
- (1) DD Form 149 w/ enclosures
 - (2) DD Form 214
 - (3) NAVMC 118(9), Combat History – Expeditions – Awards Record
 - (4) Standard Form 513, Clinical Record, 25 March 1968
 - (5) [REDACTED] Staff Legal Officer Memo [REDACTED] subj: Review of attached Record of Trial; case of [Petitioner] [REDACTED]
 - (6) [REDACTED] Staff Legal Officer Memo [REDACTED] subj: Recommended general court-martial; case of [Petitioner] [REDACTED]
 - (7) HQMC Memorandum for the Record [REDACTED]
 - (8) [REDACTED] CG Memo 17/[REDACTED] subj: General court-martial; case of [Petitioner], [REDACTED]
 - (9) NAVMC 118(13), Record of Conviction by Court-Martial
 - (10) Decision *in the case of United States v. [Petitioner]*, in the Board of Review, U.S. Navy [REDACTED]
 - (11) Petition by the Accused for Grant of Review before the United States Court of Military Appeals, in the case of *United States v. [Petitioner]*, [REDACTED]
 - (12) NAVPERS 3048, Request for Restoration/Clemency [REDACTED]

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- (13) Order Denying Petition for Review, in the case of *United States v. [Petitioner]*, in the United States Court of Military Appeals, Case No. [REDACTED]
- (14) NAVPERS 1640/2 Classification Recommendations, [REDACTED]
- (15) HQMC Memo [REDACTED], First Endorsement on Enclosure (14), subj: [Petitioner] request for clemency, case of [REDACTED]
- (16) Naval Clemency and Parole Board Memo N [REDACTED] subj: [Petitioner]; case of, [REDACTED]
- (17) Naval Clemency and Parole Board Order, Serial N [REDACTED]
- (18) NAVPERS 3048, Request for Restoration/Clemency, [REDACTED]
- (19) NAVPERS 1640/2 Classification Recommendations, [REDACTED]
- (20) HQMC Memo [REDACTED] First Endorsement on Enclosure (20), [REDACTED]
- (21) [REDACTED] Supplementary Court-Martial Order [REDACTED]
- (22) Report of Medical Examination, 12 January 1970
- (23) Naval Clemency and Parole Board Order, Serial [REDACTED]
- (24) BCNR Letter [REDACTED]: [REDACTED] 19 February 1980
- (25) Internal Medicine Associates of Middle [REDACTED] Letter, 5 December 2022
- (26) BCNR Memo Docket No. [REDACTED] subj: Advisory Opinion ICO [Petitioner], 27 February 2023

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his dishonorable discharge be upgraded to "Honorable."¹
2. The Board considered Petitioner's allegations of error or injustice on 26 May 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include references (b) – (e).
3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board 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 Petitioner did not file enclosure (1) in a timely manner, it is in the interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.²
 - c. Petitioner enlisted in the Marine Corps and began a period of active duty on 19 June 1967. See enclosure (2).

¹ This application constitutes a request for reconsideration of the Board previous denial of his request for relief in Docket No. 6028-77. Such reconsideration is directed by reference (c).

² Waiver of the statute of limitations is also mandated in this case by reference (c).

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d. Petitioner participated in combat operations in the [REDACTED] ([REDACTED]) beginning on 3 March 1968. See enclosure (3).

e. On 25 March 1968, Petitioner received an audiogram upon his complaint of hearing loss.³ The audiogram reflected very little change from his enlistment physical on 15 February 1964. See enclosure (4).

f. On or about 13 April 1968, Petitioner rendered aid to a fellow platoon member while under fire when the unit corpsman was unable to reach the wounded Marine. The corpsman credited Petitioner's actions with saving the Marine's life.⁴ See enclosure (5).

g. On 6 May 1968, a 13-man squad of Marines, not including Petitioner, was occupying a Platoon Patrol Base (PPB) approximately 1-1/2 miles east of the city of [REDACTED], [REDACTED]. At approximately 0300 hours that morning, the PPB was attacked by an enemy force of unknown size. That attack was repulsed. When the Company Commander became aware of the attack that morning, he directed that another squad be sent to the PPB to search for bodies and blood trails left by the enemy. That squad, which included Petitioner, was dispatched at approximately 0800 hours. At a distance of approximately 200 meters from the PPB, the squad came upon three [REDACTED] men standing on the trail wearing civilian clothes without weapons. Those men were later identified as [REDACTED] (age 32), [REDACTED] (age 43), and [REDACTED] (age 65).⁵ Petitioner and his squad leader began interrogating the three men, and found that they did not have identification cards. Accordingly, they were taken into custody and escorted to the PPB. Upon their arrival, most of the 13-man squad which had been occupying the PPB at the time of the attack gathered around the three prisoners. The idea developed that two of the men should be executed by a "firing squad," and the Marines became excited by the prospect. In the midst of this excitement, Petitioner's squad leader stated that he wanted to save one of the prisoners for himself, and led [REDACTED] away from the group. Upon arriving at the command post bunker, Petitioner's squad leader began slapping [REDACTED] around and pushed him to the ground. While this was happening, [REDACTED] and [REDACTED] were led onto a partially destroyed bridge that spanned a canal adjacent to the PPB. They were made to stand facing the bank of the canal, while a group of seven Marines, which included Petitioner, arrayed themselves in a rough semi-circle at the end of the bridge facing the two prisoners. Each of the Marines raised their M-16 rifles, and fired at the prisoners on the count of three.⁶ Both prisoners fell backward off of the bridge after being shot.⁷ Several of the Marines then threw grenades in the vicinity of the bodies in an effort to sink them into the water. Petitioner and another Marine then approached [REDACTED], grabbed him by his arms, and led him into a concrete building within the PPB. Once in the building, the other Marine took a white nylon cord he had been carrying and made a hangman's noose with it. Petitioner tied

³ Petitioner asserted in enclosure (1) that a mortar round or some other heavy explosive hit very close to him and ruptured his eardrums.

⁴ Petitioner asserted in enclosure (1) that he was promised a promotion and a Silver Star for his actions on 13 April 1968.

⁵ It was stipulated during the Petitioner's subsequent court-martial that [REDACTED] was on the "Black List" compiled by the American Counterintelligence Team as a Viet Cong guerrilla. See enclosure (5).

⁶ Three of the Marines admitted to firing at and hitting the prisoners. The other four Marines, which included Petitioner, denied complicity in the act.

⁷ One of the Marines stated that one of the prisoners was still breathing in the water face up, and was therefore shot again.

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[REDACTED]'s hands behind his back and made him stand on a chair. The other Marine placed the noose around [REDACTED]'s neck and tied the other end of the rope around a beam that crossed the top of the building. Petitioner then pulled the chair out from under [REDACTED], who dropped down so that his feet could barely reach the floor. [REDACTED] hung there gagging, while the other Marines kicked him in the groin and face and Petitioner kicked him in the chest. When one of the Marines hit [REDACTED] in the head with a sandbag, the cord snapped. [REDACTED] fell to the floor, still alive. The other Marine who tied the noose then retrieved his Bowie knife, stabbed [REDACTED] in the chest, and twisted the blade around. When even this did not kill [REDACTED], he then cut [REDACTED]'s throat. The Marines then threw [REDACTED]'s body into the canal where the other two men had been killed, and began throwing more grenades into the water in an effort to sink the bodies.⁸ See enclosure (6).

h. On 12 May 1968, a preliminary inquiry of the events of 6 May 1968 was initiated by the [REDACTED] Criminal Investigation Division. That inquiry was completed on 4 June 1968. See enclosure (6).

i. On 5 June 1968, Petitioner was charged with three specifications of premeditated murder in violation of Article 118, Uniform Code of Military Justice (UCMJ). The charged specifications were as follows:

(1) That Petitioner did, at or near [REDACTED], [REDACTED], [REDACTED], [REDACTED], on or about 6 May 1968, with premeditation, murder [REDACTED], by means of shooting him with an M-16 rifle and by detonating grenades on or near the same [REDACTED];⁹

(2) That Petitioner did, at or near [REDACTED], [REDACTED], [REDACTED], on or about 6 May 1968, with premeditation, murder [REDACTED], by means of shooting him with an M-16 rifle and by detonating grenades on or near the said [REDACTED]; and

(3) That Petitioner did, at or near [REDACTED], [REDACTED], [REDACTED], on or about 6 May 1968, with premeditation, murder [REDACTED], by means of hanging him by the neck, cutting his throat with a knife, stabbing him with a knife, then throwing him into a stream and while the same [REDACTED] was therein, shooting him with an M-16 rifle and detonating grenades on or near the said [REDACTED].¹⁰

See enclosure (6).

j. On 9 June 1968, Petitioner was placed into pretrial confinement. See enclosure (6).

⁸ This effort was unsuccessful, as one of the grenades actually lifted [REDACTED]'s body into the air, and impaled his leg on a steel rod protruding from the bridge. Efforts to shoot the leg off with M-16 fire proved unsuccessful. One of the Marines finally blew the leg off with a C-4 charge, and [REDACTED]'s body was pushed back into the water.

⁹ Although it could not be proven that Petitioner fired his M-16 rifle at either [REDACTED] or [REDACTED], or threw any grenades at their bodies, it was determined that he was equally criminally liable as an aider or abettor.

¹⁰ Although Petitioner did not stab or cut the throat of [REDACTED], or throw grenades into the water to sink his body, he was considered an aider and abettor of these acts, and was therefore criminally liable for these acts.

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k. On 12 June 1968, an Article 32, UCMJ, investigative hearing convened to review the evidence and charges pending against the Petitioner. Six separate sessions were convened between 12 June and 26 June 1968. On 20 July 1968, the Article 32, UCMJ, investigating officer submitted his report to the convening authority, recommending that the charges preferred against Petitioner be referred to a general court-martial (GCM).¹¹ See enclosure (6).

l. By memorandum dated 9 August 1968, the [REDACTED] Staff Judge Advocate (SJA) recommended that the charges pending against Petitioner be referred to a GCM. See enclosure (6).

m. On 13 August 1968, the convening authority referred the three specifications of premeditated murder in violation of Article 118, UCMJ, pending against Petitioner to a GCM. See enclosure (7).

n. On 21 September 1968, Petitioner entered into a pretrial agreement with the convening authority, whereby he agreed to plead guilty to unpremeditated murder of [REDACTED]. In return for this guilty plea, the convening authority agreed to dismiss the specifications discussed in paragraphs 3i(1) and 3i(2) above; to amend the charge discussed in paragraph 3i(3) above to reflect unpremeditated murder; and to approve no more than 15 years of confinement at hard labor.¹² See enclosure (8).

o. On 23 September 1968, Petitioner was convicted by a GCM, pursuant to his plea, of the unpremeditated murder of [REDACTED] by the means discussed in paragraph 3i(3) above, in violation of Article 118, UCMJ. He was sentenced to be reduced to E-1, confined at hard labor for two years, to forfeit all pay and allowances, and to be dishonorably discharged. See enclosure (9).

p. By memorandum dated 10 December 1968, the SJA recommended that the convening authority approve the sentence as adjudged.¹³ See enclosure (5).

q. On 12 December 1968, the convening authority approved the sentence as adjudged by the GCM.¹⁴ See enclosure (9).

r. On 11 February 1969, the Board of Review (BOR) affirmed the findings and sentence of Petitioner's GCM approved by the convening authority in accordance with Article 66, UCMJ.¹⁵ See enclosure (10).

¹¹ The delay in the submission of this report was attributed to the necessity of transcribing 385 pages of testimony taken at the Article 32, UCMJ, investigation, and then reproducing the required 37 copies of such transcripts. It is not clear from the record why it was necessary to reproduce 37 copies.

¹² All other adjudged punishments could be approved.

¹³ Enclosure (5) revealed that three members of Petitioner's GCM signed a petition for clemency. The SJA acknowledged that there were many mitigating and extenuating circumstances, but nonetheless recommended approval of the sentence as adjudged because murder is a dishonorable conduct for which a dishonorable discharge was appropriate, and because the adjudged sentence was appropriately lenient.

¹⁴ Petitioner was credited with pretrial confinement credit from 9 June 1968 to 23 September 1968.

¹⁵ Petitioner had alleged error in that he was prejudicially denied an opportunity to obtain a witness on his behalf during the presentencing portion of his court-martial. Specifically, his trial defense counsel requested but was

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s. On [REDACTED] Petitioner appealed the decision of the BOR to the U.S. Court of Military Appeals (COMA). See enclosure (11).

t. On [REDACTED] Petitioner applied for clemency. Specifically, he requested suspension of the dishonorable discharge adjudged by his GCM, and a reduction to his sentence to confinement. In making this request, he stated his desire for another chance to prove himself. He further claimed to have an outstanding record and stated his belief that he could be of further service to his country. See enclosure (12).

u. On [REDACTED] the COMA denied Petitioner's appeal. See enclosure (13).

v. On [REDACTED] the majority of a local clemency board conducted at the [REDACTED], [REDACTED] ([REDACTED]) ([REDACTED]), recommended that Petitioner's sentence to confinement be reduced by two months.¹⁶ This recommendation was based primarily upon his work performance and positive behavior while in confinement at [REDACTED]. A psychiatric assessment conducted in conjunction with Petitioner's clemency request determined that no formal psychiatric diagnosis was warranted. Although Petitioner acknowledged the wrongfulness of his actions, he admitted that he felt no remorse for them. During this process, Petitioner's counselor believed that mitigation of his dishonorable discharge to a bad-conduct discharge (BCD) might be appropriate. However, the clemency board determined that restoration to duty was not appropriate. See enclosure (14).

w. Contrary to the recommendation of his local clemency board, the Commander, [REDACTED], recommended against granting Petitioner any clemency based upon his guilty plea to a very serious offense and the minimal sentence that Petitioner received for that offense. See enclosure (14).

x. By memorandum dated 26 June 1969, the Commandant of the Marine Corps (CMC) recommended to the Naval Clemency and Parole Board (NCPB) that no clemency be granted in Petitioner's case. See enclosure (15).

y. By memorandum dated [REDACTED] the NCPB unanimously recommended that Petitioner's period of confinement be reduced by two months. In making this recommendation, the NCPB unanimously found that Petitioner was more culpable with regard to the offenses committed than was one of the co-accused Marines who was seeking clemency at the same time, noting that Petitioner directly assisted in the hanging of [REDACTED] by pulling the chair from under him. However, the NCPB noted that other members of the squad who were involved in the incident were found not guilty or had their charges dismissed, and in view of the fact that

denied the opportunity to seek further psychiatric evaluation of Petitioner to demonstrate that his actions were not premeditated. Since Petitioner was not on trial for premeditated murder, the Law Officer considered such evidence to be inappropriate and denied this request. The BOR found no merit in this assignment of error, and concluded that "the sentence as approved was manifestly lenient."

¹⁶ The minority member of the local clemency board recommended a five month reduction in Petitioner's sentence to confinement.

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Petitioner had performed well and adjusted satisfactorily while at [REDACTED], the NCPB believed that some clemency was warranted. See enclosure (16).

z. On 1 August 1969, the Secretary of the Navy (SECNAV) directed, contrary to the recommendation of the NCPB, that no clemency was to be granted in Petitioner's case at that time.¹⁷ See enclosure (17).

aa. On 8 October 1969, Petitioner again requested clemency. This time he did not request restoration to duty in the Marine Corps, but instead he requested a reduction in his sentence to confinement and remission of his dishonorable discharge in favor of a General Discharge. In making this request, he noted that he had completed 15 months of his 24 month sentence, and believed that his good behavior and past record warranted clemency. See enclosure (18).

bb. On 8 October 1969, the [REDACTED] local clemency board recommended that Petitioner's sentence to confinement be reduced by two months and that his dishonorable discharge be mitigated to a bad conduct discharge (BCD). This recommendation was based upon his "outstanding adjustment" to confinement. See enclosure (19).

cc. On 10 November 1969, the Commander, [REDACTED], again contrary to the recommendation of his clemency board, recommended against any clemency. While he agreed that Petitioner had made a "fine institutional adjustment" for which he had been rewarded with privileges in confinement, he concurred with the BOR conclusion that Petitioner received a "manifestly lenient" sentence for his serious crime. See enclosure (19).

dd. By memorandum dated 26 November 1969, the CMC again recommended that no clemency be granted. See enclosure (20).

ee. By order dated 6 January 1970, Petitioner's remaining confinement was remitted by order of the Commander, [REDACTED]. As Petitioner's projected release date was 3 February 1970 at the time, Petitioner was released from confinement just less than a one month early. See enclosure (21).

ff. On 12 January 1970, Petitioner received a separation physical examination which medically cleared him for discharge.¹⁸ See enclosure (22).

gg. On 2 March 1970, the SECNAV directed that no clemency be granted in Petitioner's case.¹⁹ See enclosure (23).

¹⁷ Enclosure (17) reflects that the SECNAV denied clemency for five of Petitioner's co-accused Marines at the same time.

¹⁸ The record of this examination reflects that Petitioner's hearing was examined with no noted deficiencies, but there are no audiogram entries.

¹⁹ Enclosure (23) reflects that the SECNAV considered clemency for two of Petitioner's co-accused Marines at the same time. He denied clemency for one of the two, but mitigated the dishonorable discharge to a BCD for the Marine referred to in paragraph 3y above who the NCPB had previously found to be less criminally culpable than Petitioner.

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hh. On 7 September 1971, Petitioner's was dishonorably discharged from the Marine Corps pursuant to his approved GCM sentence.²⁰ See enclosure (2).

ii. On 20 December 1979, the Board denied Petitioner's previous request for relief in Docket No. 6028-77. He had requested relief in that application based upon the contentions that the Vietnam War was unjust and that he was singled out for punishment. The Board specifically found that Petitioner's perceptions of his own conviction were not supported by the facts, as five other Marines were tried for offenses arising from the events of 6 May 1968. See enclosure (24).

jj. Petitioner asserts that relief is warranted because he received the second harshest sentence of the Marines who were involved in the events of 6 May 1968.²¹ He claims to have been informed that all of the other Marines involved have had their discharges upgraded. Finally, Petitioner asserts that, even with the stigma of his dishonorable discharge, he found work, married, raised a family, and contributed to his community.²² He claims to have previously served as a [REDACTED] ([REDACTED]) Fire Chief, and worked as an auxiliary deputy for the Sheriff's Department. However, his situation has changed, as he is now alone and living in a public housing project 30 miles away from his family. His worst disability, severe hearing loss, was a direct result of the injuries that he sustained in [REDACTED]. Petitioner provided numerous letters of support and certificates in support of his application. Among these documents is evidence that Petitioner saved the life of a [REDACTED] ([REDACTED]) Electrical Department employee while performing volunteer work in 1975 by performing life-saving measures after the individual was struck by lightning during tornado damage clean-up. See enclosure (1).

kk. By letter dated 5 December 2022, Petitioner's medical provider expressed his professional opinion that Petitioner suffers from post-traumatic stress disorder (PTSD) based upon his screening score on the PC-PTSD-5 tool.²³ The provider further stated that Petitioner had reported that the PTSD symptoms discussed were present during his service in the Marine Corps. See enclosure (25).

II. Because Petitioner's claim for relief is based in part on combat-related PTSD, the Board sought the advice and counsel of a licensed clinical psychologist in accordance with reference (a). That licensed clinical psychologist reviewed Petitioner's application and records, and provided an advisory opinion (AO) dated 27 February 2023. Review of Petitioner's in-service medical records revealed no evidence that Petitioner was diagnosed with any mental health conditions while in the Marine Corps, aside from one medical note dated February 1969 indicating anxiety due to claustrophobia. Further, no evidence was found that Petitioner

²⁰ It is not clear from the record why the execution of Petitioner's dishonorable discharge was so delayed.

²¹ Petitioner asserts that, unlike the other Marines who were charged, he was unable to hire a civilian attorney to defend him and relied upon the court-appointed attorney to represent him. He also claims that some of the other Marines were able to bring their families to Vietnam to lend support during their trials.

²² Petitioner performed construction work after his release from confinement. He obtained licenses for electrical, plumbing, building, EMT, Advanced First Aid Instructor, CPR instructor, and Civil Defense Rescue Instructor. Evidence of some of these certificates was provided with his application.

²³ Petitioner checked "PTSD" on Block 13 of his DD Form 149, but originally did not provide any documentation in support of this claim. When notified of this fact, he provided the letter at enclosure (24).

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exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. In fact, a neuropsychological assessment dated March 1969 indicated that Petitioner “felt no guilt for his actions” and blamed other circumstances for his misconduct. The AO’s author stated that neither Petitioner’s personal statement nor enclosure (25) were sufficiently detailed to establish clinical symptoms or to provide a nexus with his misconduct, but that additional records might aid in rendering an alternative opinion. Ultimately, the AO found insufficient evidence of a mental health condition that may be attributed to military service, and insufficient evidence that Petitioner’s misconduct could be attributed to a mental health condition.²⁴ See enclosure (26).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined that partial relief is warranted in the interests of justice.

The Board found no error or injustice in Petitioner’s dishonorable discharge from the Marine Corps at the time that it was administered. Petitioner pled guilty to unpremeditated murder, and admitted to particularly depraved actions in the execution of this murder. As such, his misconduct is not in question, and the circumstances of that misconduct certainly warranted the punishment he received. In this regard, the Board concurred with the conclusion of the BOR, which found that the sentence adjudged by his GCM was “manifestly lenient” under the circumstances.

Because Petitioner based his claim for relief in whole or in part upon combat-related PTSD, the Board reviewed his application in accordance with the guidance of references (a) – (d). As such, the Board reviewed Petitioner’s claim with liberal consideration that PTSD potentially contributed to the circumstances resulting in his discharge or to the dishonorable nature of his discharge. Applying very liberal consideration, the Board believed it to be possible that Petitioner was suffering from PTSD as a result of his experiences in [REDACTED] prior to 6 May 1968, and that the symptoms of this undiagnosed condition could have contributed to his actions on 6 May 1968. However, even applying liberal consideration, the Board agreed with the AO that Petitioner provided insufficient evidence or details that would enable the Board to draw any nexus between Petitioner’s claimed PTSD condition and his conduct on 6 May 1968. Petitioner provided no description of his symptoms at the time, and did not even assert that those symptoms contributed to his conduct. Further, the existence of this condition at the time of his offense is undermined by the absence of any behavioral markers or psychiatric issues in his record following this incident and the fact that Petitioner has apparently not been impaired by any such undiagnosed condition in the years since his discharge. Any potential nexus between such a condition and his conduct on 6 May 1968 is undermined by the fact that Petitioner has offered

²⁴ A copy of this AO was provided to Petitioner for comment by letter dated 1 March 2023. He was provided 30 days to respond to the AO. He responded by letter dated 23 March 2023, requesting additional time to respond so that he could obtain a copy of his court-martial transcription. In this regard, he stated that some of the charges listed in the AO were not accurate, but the AO accurately states the charge of which Petitioner was convicted. Petitioner noted that he was undergoing medical treatment for a heart condition, and had a surgical procedure scheduled for 28 March 2023. No follow-up was received by the Board prior to its convening on 26 May 2023, nearly three months after the AO was sent to him.

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other explanations for his actions in the past, and has consistently expressed no remorse for those actions. In any case, the severity of the offense for which Petitioner was convicted would far outweigh any mitigation that an undiagnosed PTSD condition might offer. Although the Board had insufficient evidence to conclude that an undiagnosed PTSD condition mitigated or excused Petitioner's conduct on 6 May 1968, it did consider his recent PTSD diagnosis and the possibility that this condition arose as a result of his service in Vietnam among the totality of the circumstances to determine whether clemency is warranted, as discussed below.

Finally, the Board considered the totality of the circumstances to determine whether clemency may be warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, Petitioner's meritorious service in the Marine Corps both before and after the events of 6 May 1968, which included apparently heroic acts under fire to save the life of a fellow Marine; the possibility, established through a very generous application of liberal consideration, that Petitioner's recently diagnosed PTSD condition arose as a result of his experiences in [REDACTED]; that other Marines who were involved in the events of 6 May 1968 had their discharges upgraded and/or charges dismissed, including the fact that one of the Marines who had been sentenced to life in prison for his involvement had his conviction set aside by the convening authority; that Petitioner is apparently the only one of the Marines involved in the events of 6 May 1968 whose discharge continues to be characterized as dishonorable; that the [REDACTED] clemency board believed that Petitioner's dishonorable discharge should be mitigated to a BCD in 1969; Petitioner's claim that his current hearing loss is attributable to his service in [REDACTED]; Petitioner's post-service record of employment and service to his community, reflecting significant rehabilitation and resiliency to overcome the stigma of his dishonorable discharge; the character references provided with Petitioner's application; the evidence that Petitioner saved the life of another individual in 1975 through his quick action and application of his first aid skills; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Board determined that Petitioner's dishonorable discharge should be upgraded to a BCD purely as an act of clemency.

The Board did not believe that further relief, to include the extraordinary relief of an upgrade of his discharge characterization to fully honorable that he requested, was warranted given the totality of the circumstances. Petitioner admitted to a very serious offense, executed through depraved means. Such conduct is inherently dishonorable, and is of such severity to far outweigh all potentially mitigating circumstances. Further, it is clear that some of the mitigating circumstances considered by the Board were already taken into account given the lenient sentence that Petitioner received. Finally, while other Marines involved in the incident may have suffered less severe consequences than did the Petitioner, Petitioner enjoyed an objectively lenient sentence for his admitted misconduct and was found by the NCPB to be more culpable than at least one of the other Marines whose dishonorable discharge was upgraded. While the Board acknowledged Petitioner's post-service rehabilitation and contributions to his community, those factors simply were insufficient to overcome the circumstances of Petitioner's actions on 6 May 1968 to justify further relief beyond that recommended by the Board herein.

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RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a DD Form 215 reflecting that he was discharged on 7 September 1971 with a "Bad-Conduct Discharge" (vice a "Dishonorable Discharge").

The Board further recommends that Headquarters, Marine Corps, review blocks 22 and 26a of Petitioner's DD Form 214 for accuracy, as it appears that he may have been mistakenly credited for active service while he would have been on extended appellate leave pending execution of his dishonorable discharge.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on Petitioner's naval record.

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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

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SECRETARY OF THE NAVY DECISION:

— Board Decision Approved (Partial Relief – I concur with the Board’s conclusions and therefore direct the corrective action recommended by the Board above.)

[REDACTED] Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s conclusion that clemency is warranted in the interests of justice. Specifically, I find that Petitioner’s misconduct was of such severity that the mitigating circumstances are insufficient to warrant any clemency. I further find that Petitioner already enjoyed significant leniency for the crime to which he admitted, and that further clemency is therefore not warranted. Accordingly, I disapprove the Board’s recommendation and direct that no corrective action be taken on Petitioner’s naval record. I do, however, direct Headquarters, Marine Corps, to review blocks 22 and 26a of Petitioner’s DD Form 214 for accuracy, and to take corrective action if, in fact, he has mistakenly been credited for active service while on extended appellate leave pending execution of his dishonorable discharge.)

— Board Decision Approved (with modification) (Partial Relief – I generally concur with the Board’s conclusion that clemency is warranted given the totality of the circumstances, but I do not believe that the relief recommended by the Board goes far enough to serve the interests of justice. Specifically, I find the mitigating circumstances sufficient to justify an upgrade of Petitioner’s dishonorable discharge to “General (under honorable conditions).” Accordingly, I direct the relief recommended by the Board above, except that Petitioner’s discharge is to be characterized as “General (under honorable conditions).”)

— Petitioner’s Request Approved (Full Relief – I generally concur with the Board’s conclusion that clemency is warranted given the totality of the circumstances, but I do not believe that the relief recommended by the Board goes far enough to serve the interests of justice. Specifically, I find the mitigating circumstances sufficient to justify an upgrade of Petitioner’s dishonorable discharge to “Honorable” as he requests. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his discharge on 7 September 1971 was characterized as “Honorable.” Petitioner is also to be issued an Honorable Discharge Certificate, with a corresponding correction to Block 13b of his DD Form 214.)

[REDACTED]
Date: JAN 31 2024