



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

██████████  
Docket No. 9243-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████

██████████ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)  
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)  
(d) USD Memo of 25 Aug 17 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures  
(2) Advisory Opinion (AO) of 18 Apr 24

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 (Board) requesting that his discharge be upgraded to "Honorable," his narrative reason for separation be changed to reflect "Secretarial Authority," his reentry code be changed to "RE-1," his rank and pay grade be adjusted to "Corporal/E-4," his lost time be changed to "0" days or to remove reference to lost time, and that his awards be corrected to reflect entitlement to the Good Conduct Medal (GCM). Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 24 May 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (2), an advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner's mental health contentions.

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty on 27 March 1969.

c. From 19 March 1970 through 3 March 1971, he participated in counterinsurgency operations in Danang, Republic of Vietnam. In March 1970, he was wounded in combat after suffering a head injury from a mortar attack on his living quarters, and he was subsequently awarded the Purple Heart Medal (PHM).

d. On 16 February 1971, toward the end of his combat tour, Petitioner was subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) which included an Article 86 offense for being absent from his appointed place of duty and two specifications under Article 92 for failure to obey the lawful orders of a master sergeant to remove a fuel injector pump and to clean the shop prior to securing. He appealed his punishment of reduction to E-3, which resulted in his reduction being suspended for a period of six months.

e. In June of 1971, Petitioner transferred to [REDACTED], for duty as a Marine Security Guard. While there, he established a significant misconduct record, to include:

(1) NJP, on 15 September 1971, for violation of the UCMJ under Article 91 by violating a General Order by laying down on the ground on post, for which he was reduced to E-3;

(2) NJP, on 20 September 1971, for violation of the UCMJ under Article 92 by failing to obey a lawful order due to having cigarettes on post, for which his previously suspended reduction to E-3 was vacated and his punishment of reduction to E-2 was suspended;

(3) On 19 October 1971, Petitioner was granted assignment to the Drug Exemption Program after reporting marijuana use while in Vietnam as well as use of marijuana, LSD, inhalants, and stimulants while in [REDACTED];

(4) NJP, on 21 October 1971, for two specifications of violating Article 86 of the UCMJ for periods of unauthorized absence (UA) for several hours on the mornings of 1 and 19 October 1971 and for a violation of Article 92 due to failure to obey a lawful order from duty the duty sentry to return to the barracks on 19 October 1971, with his previously suspended reduction being vacated in addition to reduction to E-1 and 14 days of restriction and extra duty;

(5) Conviction by Summary Court-Martial (SCM), on 10 December 1971, with a sentence of 60 days of restriction with 45 days of hard labor without confinement in addition to one month partial forfeiture of pay, for multiple violations of the UCMJ, to include: two specifications of Article 86, for two UA periods of several hours each during the early mornings of 30 November and 1 December 1971; Article 91, for willfully disobeying a lawful order from a gunnery sergeant to get a haircut; and, Article 92, for dereliction in the performance of duties by failing to stop an unauthorized vehicle from entering a "no entry" area;

(6) Conviction by Special Court-Martial (SPCM), on 16 February 1972, with a sentence of 2 months confinement at hard labor with concurrent forfeitures of pay, for multiple violations of UCMJ to include: two specifications of Article 92, for failure to obey a lawful order by having

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cigarettes on post and for dereliction in the performance of duty by sitting down on post; two specifications of Article 134, for breaking restriction and for wrongfully appearing in an improper uniform by not wearing a cover; and, Article 113, for leaving his post as a sentry before being properly relieved.

f. Between his SCM and SPCM convictions, Petitioner was administratively counseled, on 17 January 1972, for frequent involvement of a discreditable nature. Then, on 28 April 1972, following his release from confinement, his commanding officer recommended his separation for convenience of the Government, noting that his average proficiency and conduct marks warranted a characterization of General (Under Honorable Conditions) (GEN).

g. While the recommendation for his separation was still pending, Petitioner was again convicted by SCM, on 26 May 1972, for violation of Article 113 due to sleeping on post, for which he was sentenced to 60 days of restriction and 45 days of hard labor without confinement. While still subject to this punishment, following approval of his administrative separation, Petitioner was discharged, on 27 June 1972, under honorable conditions for the reason of convenience of the government, under the authority of Marine Corps Separation Manual, paragraph 6012.1f(4) and Commandant of the Marine Corps message 052004Z Jun72, with a restrictive RE-4 reentry code.

h. Petitioner contends that the head injury for which he was awarded the PHM included a traumatic brain injury (TBI) that caused disorientation for a period of approximately six months after his tour in Vietnam and resulted in the subsequent misconduct issues which led to his GEN discharge. Based on his post-discharge diagnosis of post-traumatic stress disorder (PTSD) by the Department of Veterans Affairs (VA), he also believes he was experiencing symptoms and behaviors of PTSD which were further exacerbated during his tour as a security guard in Italy. He believes that a proper diagnosis and treatment of his PTSD and TBI contemporaneous with his military service would have resulted in a more favorable discharge. For purposes of clemency and equity consideration, he submitted a personal statement, legal arguments in which he cites to previous Board decisions in cases which he believes are similar to his circumstances, emails between himself and an officer who served with him at the command from which he was separated, his PHM records, VA records documenting his PTSD disability rating, progress notes, and neuropsychiatric testing, service health records, and evidence of post-discharge character to include transcripts, diplomas, certifications, and a reference letter.

i. Because Petitioner contends that a mental health condition contributed to the circumstances of his misconduct, the Board also requested the AO, for consideration, which advised that:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. However, post-service, the VA has granted service connection for PTSD and provided treatment for TBI. While his cognitive difficulties have been attributed to mental health symptoms, rather than TBI, it is plausible that his

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misconduct could be attributed to irritability and avoidance related to undiagnosed PTSD symptoms.

The AO concluded with a clinical opinion that “there is post-service evidence from the VA of diagnoses of PTSD and TBI that may be attributed to military service. There is post-service evidence to attribute his misconduct to PTSD.”

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants partial relief. The Board reviewed the application under the guidance provided in references (b) through (e).

In this regard, the Board noted Petitioner’s misconduct and does not condone it; however, in addition to concurring with the clinical opinion of the AO regarding post-service evidence of diagnoses of PTSD and TBI to which Petitioner’s misconduct may also be attributed, the Board noted that there is in-service evidence documenting Petitioner’s traumatic experience and head injury for which he was awarded the PHM. The Board found it credible that Petitioner’s continued tour in Vietnam further contributed to his mental health struggles and that the dramatic change from a combat environment to overseas service as a Marine Security Guard likely further exacerbated his mental health conditions. Additionally, the Board found that Petitioner’s evidence of post-service character and accomplishments reflected favorably upon consideration of clemency. As a result, the Board found that the totality of mitigating factors in support of liberal consideration, in conjunction with clemency, outweighed the misconduct which resulted in Petitioner’s administrative GEN discharge. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief with respect to his characterization of service and narrative reason for discharge.

Regarding Petitioner’s request for relief involving his reduction in grade due to NJP, the lost time documented from his SPCM confinement, and his ineligibility for the GCM due to his violations of the UCMJ, although the Board found that the totality of favorable factors mitigated his characterization of service and reason for separation, the Board found insufficient evidence that his punishments for the misconduct documented in his NJPs, SCM, or SPCM were erroneous, unjust, or otherwise wrongful. Therefore, the Board determined that there is no basis to grant the requested relief in that regard. Ultimately, the Board determined that any injustice in Petitioner’s record is adequately addressed by the recommended corrective action.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 27 June 1972, his “Honorable” discharge was issued under the authority of “MARCORSEPMAN par 6012.1f,” for the narrative reason of “Convenience of the Government – When directed by the Secretary of the Navy” and “RE-1J” reentry code.

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That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in 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-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.

6/12/2024

[REDACTED]