



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

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Docket No. 9790-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014
(c) PDUSD 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," 24 February 2016
(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," 25 August 2017
(e) USD 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/attachments
(2) Subject's naval record
(3) Advisory Opinion of 7 May 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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to "Honorable," that his narrative reason for separation be changed to "Secretarial Authority," and that his reentry code be changed to "RE-1."

2. The Board, consisting of █, 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 on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) – (e). Additionally, the Board considered enclosure (3), an advisory opinion (AO) furnished by qualified mental health professional, which was considered favorable to Petitioner's mental health contentions.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or 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.

b. Petitioner enlisted in the Marine Corps and began a period of active duty service on 10 September 2004.

c. Petitioner deployed to Operation [REDACTED] Freedom [REDACTED] from 19 July 2005 through 11 February 2006. As a result of this deployment, he was awarded the Combat Action Ribbon and Purple Heart Medal (PHM) after exposure to the blast from an improvised explosive device (IED) that caused perforation of his right ear drum.

d. On 10 April 2006, Petitioner had a positive urinalysis for marijuana use. He was notified of separation processing for misconduct due to drug abuse and, on 28 April 2006, elected to waive his rights to consult legal counsel and to request a hearing before an administrative separation board. He also chose not to submit a statement for consideration of his proposed discharge.

e. On 4 May 2006, Petitioner was found guilty by a Summary Court-Martial (SCM) for a single violation of the Uniform Code of Military Justice (UCMJ) under Article 112a for wrongful use of marijuana. His punishment included reduction to the paygrade of E-1, 30 days confinement, and one month forfeiture of \$849 pay.

f. On 18 July 2006, Commanding General [REDACTED] Marine Division, approved the recommendation for Petitioner's separation under Other Than Honorable conditions for the reason of misconduct due to drug abuse, and he was discharged on 27 July 2006 with an "RE-4B" reentry code.¹

g. Petitioner contends that he suffered a traumatic brain injury (TBI) from his IED exposure, in addition to the injury for which he was awarded the PHM, and that he also developed post-traumatic stress disorder (PTSD) from combat trauma during his OIF service. He believes that liberal consideration of his PTSD and TBI from his otherwise honorable combat service is sufficiently mitigating to outweigh his sole misconduct of self-medicating marijuana use and warrant a fully honorable characterization of service. In support of his contentions, he provided a letter of support from a Marine Corps peer attesting to the IED incident and to his exposure to a traumatic combat environment; he also provided his Department of Veteran Affairs (VA) records to include his TBI consultation and Disability Benefits Questionnaire (DBQ), OIF/OEF consultation, PTSD consultation, and mental health diagnostic study.

¹ At the time of his involuntary discharge, Petitioner's proficiency and conduct marks were sufficiently high to otherwise qualify for an Honorable characterization of service.

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h. Because Petitioner based his claim for relief upon his contention that he developed PTSD and TBI as a result of his exposure to combat trauma during his military service, and that those conditions contributed to the misconduct for which he was discharged, his application and records were reviewed by a qualified mental health professional who noted that his VA assessments for TBI and PTSD both confirm positive diagnoses sustained from his OIF deployment. The AO observed that:

Although there is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, it is possible that he was suffering from undiagnosed PTSD and TBI symptoms following his deployment. As such, it is also possible that he was using marijuana to cope with negative symptoms of either or both diagnoses.”

The AO concluded, “ it my considered clinical opinion there is sufficient evidence of a mental health condition/s that may be attributed to military service. There is sufficient evidence that his misconduct could be attributed to PTSD, TBI, or both.” Enclosure (3).

CONCLUSION

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

Because Petitioner based his claim for relief in whole or in part upon his experience of combat-related trauma and resulting mental health symptoms, the Board reviewed his application in accordance with the guidance of references (b) – (d). Accordingly, the Board applied liberal consideration to Petitioner’s contention that his self-medication of symptoms of PTSD and TBI mitigate the misconduct for which he was discharged.

In this regard, the Board concurred with the AO that there is sufficient evidence that his misconduct could be attributed to PTSD, TBI, or both. Applying liberal consideration, the Board concluded that there is sufficient evidence of the experience of combat-related trauma, PTSD, and TBI claimed by Petitioner to warrant the requested relief. The Board noted that Petitioner’s record contained no evidence of misconduct prior to his return from OIF and that his sole misconduct was in-service marijuana use following his return from that combat deployment. Therefore, they concluded that these mitigating circumstances sufficiently outweighed Petitioner’s misconduct to justify the requested relief.

RECOMMENDATION

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that, for the period ending 27 July 2006, his characterization of service was

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[REDACTED]

“Honorable,” under the separation authority of “MARCORSEPMAN par 6214,” for the narrative reason of “Secretarial Authority,” with a separation code of “JFF1,” and a “RE-1J” reentry code.

That Petitioner be issued an Honorable Discharge certificate.

That a copy of this record 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 titled 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 Regulations, 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/5/2024

