



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

[REDACTED]  
Docket No. 6433-24

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]  
XXX XX [REDACTED] 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 19 Dec 24

1. Pursuant to the provisions of reference (a), Subject (deceased), hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) via his surviving spouse, requesting that his punitive discharge be upgraded to Honorable. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 December 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 considered the advisory opinion (AO) furnished by qualified mental health provider, Petitioner's response to the AO, and the revised AO.

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.

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 17 June 1966.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

c. Petitioner deployed to the Republic of Vietnam in support of combat operations. Between 26 April 1967 and 27 April 1968, Petitioner participated in counter insurgency operations, in the named Operations [REDACTED], and served with the [REDACTED]. During this period, Petitioner earned the Vietnam Campaign Medal, Vietnam Service Medal, and Presidential Unit Citation.

d. While deployed, Petitioner was subject to nonjudicial punishment (NJP) on two occasions. On 13 September 1967, he received NJP for violation of Article 92 of the Uniform Code of Military Justice (UCMJ) for dereliction in the performance of duty by failing to remain alert while serving a sentry on post. On 10 April 1968, he again received NJP for violation of Article 92 of the UCMJ by failure to obey a lawful order issued by a corporal to get to work.

e. Upon his return from deployment, Petitioner absented himself without authority from 3-4 June 1968; which appears to be the basis for his third NJP on 11 June 1968. However, the article of his offense was not specified in his records.

f. Petitioner again absented himself from 24 June 1968 through 15 July 1968. Following his return to military authority, he was convicted by Summary Court-Martial, on 25 June 1968, for a violation of Article 86 of the UCMJ. He was reduced to the paygrade of E-2 and punished with 30 days of hard labor without confinement.

g. While still subject to this punitive sentence, Petitioner absented himself for two additional periods spanning from 8 August 1968 until 8 September 1968; although he temporarily returned to military control on 12 August 1968. As a result, Petitioner was placed into pre-trial confinement. On 23 September 1968, he pleaded guilty before Special Court-Martial (SPCM) to two specifications of violation of Article 86 of the UCMJ due to his UA periods. His sentence included 5 months confinement at hard labor with concurrent forfeitures of pay and reduction to the paygrade of E-1.

h. The Convening Authority approved only four months of confinement and remitted the remainder of confinement on 5 December 1968; resulting in Petitioner's early release. However, Petitioner again absented himself from 2-5 January 1969; resulting in a second SPCM conviction, on 17 January 1969, for his additional violation of Article 86 of the UCMJ. Although his sentence included six months confinement at hard labor with a punitive discharge, the convening authority approved only three months of confinement and suspended Petitioner's Bad Conduct Discharge (BCD) for a period of six months.

i. Petitioner commenced an extended period of UA on 31 March 1969; during which he was declared a deserter. Meanwhile, on 9 May 1969, Article 66 review of his second SPCM conviction upheld the findings with respect to the charged offense but set aside his sentence due to legal error. As a result, a rehearing was authorized with instructions to comply with the legal review; which was held in abeyance during Petitioner's UA.

j. On 11 July 1969, following the termination of Petitioner's UA period on 1 July 1969, a rehearing was conducted for the sentencing phase of Petitioner's second SPCM. He was

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

sentenced to three months confinement at hard labor and, again, a punitive discharge. The Convening Authority credited him with time already served for purposes of his sentence of confinement and again suspended his BCD for a period of six months.

k. Petitioner commenced another period of UA on 23 July 1969; during which his second SPCM was again subject to Article 66 review. However, his record contains only a partial copy of this review and no indication that the suspension of his BCD was vacated.

l. Although his UA terminated temporarily on 17 October 1972, Petitioner again absented himself from 16-27 November 1972 and, again, on 4 December 1972. After having remained in a UA status for nearly two years, Petitioner was charged with desertion on 25 October 1974.

m. Petitioner surrendered himself on 6 February 1976 and was returned to military control. He submitted a statement regarding his absence explaining that he had returned in October 1972 in order to be discharged but had again absented himself.

n. Formal charges for his later periods of UA were referred to SPCM and Petitioner submitted a request for separation in lieu of trial; which was approved as an undesirable administrative discharge on 3 March 1976. As a result, Petitioner was finally discharged under Other Than Honorable conditions on 25 March 1976.

o. Petitioner previously applied to the Board requesting a clemency review and contending that he was a young man who had volunteered to go to war, had been mentally stressed following his return from Vietnam, was emotionally out of control, and had nowhere to turn. He also felt panicked by rumors of potentially returning to Vietnam for another tour of duty; although this sentiment was contradicted in a psychiatric evaluation made in July of 1968 in which he expressed unresolved feelings about Vietnam and feeling alienated from former friends who did not understand why he was fighting in the war.

p. Petitioner contends that his post-combat mental health issues warrant liberal consideration under the policy references. He cites to his psychiatric evaluation in July 1968, following his return from Vietnam, which documented symptoms that the mental health provided labelled as "post-combat syndrome." In support of his contentions and for clemency and equity consideration, he submitted a statement from his spouse, service health records which include a copy of his psychiatric evaluation, and a statement from his previous application to the Board.

q. Because Petitioner contends a mental health condition, the Board also requested the AO for consideration. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

medical evidence in support of his claims. While it is possible that avoidance related to undiagnosed symptoms of PTSD may have contributed to his UA, it is difficult to attribute extended and repetitive UA solely to symptoms of PTSD. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service civilian lay evidence of symptoms of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition."

In response to the AO, Petitioner provided rebuttal evidence in support of his case. After a review of the rebuttal evidence, the AO was revised to read, "There is in-service evidence from a military provider of mental health symptoms that may be considered indicative of PTSD. There is in-service and post-service evidence that some of his UA may be attributed 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 repeated UA misconduct and does not condone it; however, the Board found Petitioner's in-service diagnosis, as noted by the AO, to be highly persuasive with respect to his post-combat mental health contentions. The Board found that Petitioner's honorable combat service during the Vietnam War, in conjunction with very liberal consideration of his contended mental health condition, sufficiently mitigated some of his misconduct sufficient to warrant partial relief. As a result, the Board concluded that the totality of favorable matters in support of an upgraded characterization of service outweighed the misconduct which resulted in Petitioner's discharge under OTH conditions in lieu of trial by court-martial. As a result, the Board recommends, in the interests of justice, purely as a matter of clemency and equity, that Petitioner's characterization of service be upgraded to General (Under Honorable Conditions). In addition, based on the same rationale, the Board further recommends Petitioner's reason for separation, separation authority, separation code, and reentry code be changed to reflect a Secretarial Authority discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

higher was appropriate. 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, for the period ending 25 March 1976, he was discharged "Under Honorable Conditions," under the authority of "MARCORSEPMAN par 6012.1g," for the narrative reason of "Directed by the Secretary of the Navy to correct official records" with a separation code of "JFF2," and a reentry code of "RE-1."

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.

1/17/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]