



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 988-00

24 July 2000

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) Case Summary
(2) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, the son of a former officer of the United States Marine Corps, applied to this Board requesting, in effect, that his father's record be corrected to show that he was honorably discharged on 5 November 1943 rather than being dismissed from the Marine Corps.

2. The Board, consisting of Messrs. Milner and Geisler and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 19 July 2000 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, naval records, and applicable statutes, regulations and policies.

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. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. The record reflects that Subject enlisted in the Marine Corps on 17 July 1941 and was honorably discharged on 27 March 1943 as a CPL (E-4) to accept a commission as a 2ndLT (O-1) in the Marine Corps Reserve with a date of rank of 2 February 1943. At the time of his commission, he had prior Army Reserve commissioned service during which he was promoted to 1stLT (O-2). He served on active duty from 1 August 1940 until he was relieved of duty on 10 November 1940.

d. 10 April 1943, Subject was placed under arrest by the commanding officer for a period of 10 days for having been under the influence of intoxicating liquor and being incapacitated for the proper performance of his duties.

d. Subject served without further incident until 16 June 1943 when he was tried by general court-martial for two specifications of disobedience of an order, two specifications of breaking arrest, and drunkenness. He was acquitted of the charges of disobedience and breaking arrest, but was found guilty of drunkenness. He was sentenced to confinement at hard labor for 12 months and to be dismissed from the Marine Corps. On 28 June 1943, the convening authority approved the findings and the sentence, but remitted that portion of the sentence pertaining to confinement and corresponding accessories.

e. On 10 July 1943, Subject was transferred to the Marine Barracks at Treasure Island and confined to the limits of Treasure Island to await final action on the general court-martial. On 10 September 1943, Headquarters, Marine Corps requested that the Adjutant General of the Army provide the circumstances surrounding Subject's relief from active duty on 10 November 1940 and information on his fitness to serve as a commissioned officer. Subject broke arrest on 11 September 1943 and the commanding officer recommended that he be immediately dismissed.

f. On 18 September 1943, the Adjutant General responded that Subject was relieved from active duty on 10 November 1940 by reason of psychoneurosis, and was later charged with passing three small worthless checks. However, since it was impossible to locate him at that time, he was discharged under honorable conditions on 21 June 1941. The circumstances leading to his separation clearly demonstrated that he did not possess those qualities so necessary for an officer in the Reserve Corps.

g. On 15 October 1943, the Secretary of the Navy, in conformity with Article 53 of the Articles for the Government of the Navy, submitted the record of proceedings to the President with the recommendation that the sentence, as mitigated, be confirmed. The President confirmed the sentence as mitigated on 20 October 1943 and dismissal was to become effective upon delivery of the promulgating letter from the Secretary of the Navy.

h. On 2 November 1943, Subject was again charged with breaking arrest. Examination by a medical officer found him to be in good physical condition except that he was found to be under the influence of intoxicating liquor.

i. Subject received notice on 5 November 1943 that he was no longer an officer in the Marine Corps Reserve and was dismissed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Subject's prior commissioned service in the Army Reserve, in which he was relieved of duty because of psychoneurosis and was subsequently discharged under honorable conditions. Prior to accepting a field commission in the Marine Corps Reserve, he served more than 20 months as an enlisted Marine and was promoted to CPL. Under current standards, Subject would never have been enlisted in the Marine Corps given his problems in the Army. However, at the time, the country was at war and there was a great need for able fighting men. It is apparent to the Board that Subject may have enlisted without disclosing his prior service. However, it appears that he did so out of desire to serve his country in wartime. The Board believes that his alcoholism, his relief from duty by the Army Reserve in 1940 for psychoneurosis, and his subsequent honorable enlisted Marine Corps service are significant mitigating factors. The Board is well aware that officers are held to a higher standard, but nevertheless it believes that dismissal from the service by the general court-martial was unduly harsh based on a finding of guilty on a single charge of drunkenness. The Board concludes that it would be appropriate and just to recharacterize his dismissal from the Marine Corps to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 5 November 1943 vice being dismissed on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 4 January 2000.

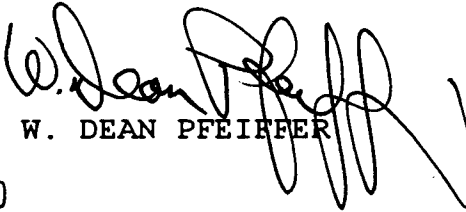
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



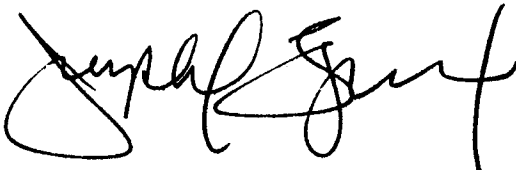
ALAN E. GOLDSMITH
Acting Recorder

5. The Foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and Approved: AUG 18 2000



Joseph G. Lynch
Assistant General Counsel
(Manpower & Reserve Affairs)