



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP

Docket No. 4728-01  
19 November 2001

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) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable discharge than the undesirable discharge on 30 December 1953.

2. The Board, consisting of Messrs. Milner, Harrison, and Shy reviewed Petitioner's allegations of error and injustice on 15 November 2001 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. Petitioner enlisted in the Marine Corps on 7 August 1953 for three years at age 21. On his enlistment document,

Petitioner answered "No" to the questions "have you ever been arrested"; have you ever been convicted of a crime"; and "have you ever been sentenced by any court?" At the time of his reenlistment, Petitioner had three years of prior active service in the Regular Army and served in Korea.

d. On 8 October 1953 the Commandant of the Marine Corps advised the Marine Corps Recruit Depot that Petitioner had fraudulently enlisted by concealing a juvenile conviction for armed robbery and the ensuing sentence to a year's probation.

e. On 27 November 1953 Petitioner stated that he did not wish to make a statement concerning his arrest for armed robbery and that he did not desire to remain in the Marine Corps. Thereafter, the commanding officer recommended that Petitioner not be retained and the commanding general directed an undesirable discharge. Petitioner was so discharged on 30 December 1953.

f. On 19 February 1954 the Board of Review, Discharges and Dismissals (BRDD) denied Petitioner's request for upgrade of his discharge.

g. In support of his application, Petitioner provides documentation that he is a member in good standing of "The Chosin Few" and a letter, dated 26 January 1954, from the juvenile court judge to the BRDD. In that letter the judge states, in pertinent part, as follows:

"I have been advised that the above named ex-serviceman received an undesirable discharge from the Marine Corps on November 30, 1953.

I am told that this undesirable discharge dates back to 1950 when (Petitioner) was a juvenile and participated in a foolish prank in the City of Fond du Lac.

I am writing as a friend of the Board of Review so that I may present the facts as they came to me as Juvenile Judge of Fond Du Lac County, who handled this matter in Juvenile Court.

It appears from the record on file and from the testimony available, that on the 21st day of July, 1949, (Petitioner) and another boy 10 years of age approached a tavern in the city of Fond du Lac; that (Petitioner) entered the tavern

and pretended he desired to hold up the proprietor. He was told to leave or they would call the police. He did then leave, told the proprietor "Forget the whole thing!"

This escapade was brought to the attention of the Juvenile Court five months thereafter. A thorough investigation was made. It appeared that (Petitioner) had been in no difficulty prior to the 21st of July, 1949, and had been in none up to the time the Juvenile conference was held, except as before stated. (Petitioner) comes from a very reputable family in the county of Fond du Lac. None of his family has ever been in difficulty. As a result (Petitioner) was asked to report to the Juvenile Officer who is a friend of the Court, rather than a probation officer, for a few weeks. This he did. No further action was taken.

Since the Juvenile records in the State of Wisconsin are confidential, there was no record available to the public which should have been revealed to the disadvantage of (Petitioner). Accordingly, you may have received reports that there is no record in the Courts of Fond du Lac county against (Petitioner). There is none which is available to the public.

I am merely relating the facts to the Board as they appear in a Juvenile record. If this information can be helpful to (Petitioner), who rendered distinguished service to his county as a member of the armed services between the dates of April 6, 1960 and April 7, 1953, I am happy to be in a position to present these facts. . ."

#### 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 that Petitioner had no disciplinary actions during the short five months he was in the Marine Corps. Petitioner was obligated to disclose his juvenile record and it was within the purview of the Marine Corps to discharge him when he failed to do so. However, the Board believes that awarding him an undesirable discharge was unduly severe given his prior honorable Army service in which he served in Korea. In retrospect, it appears to the Board that Petitioner only wanted to further serve his country and from the foregoing statement provided by the judge, it appeared

reasonable for Petitioner to conclude that "No" was the appropriate answer to the questions on his enlistment paper regarding whether he was ever arrested, tried or convicted of a crime. The Board believes that no useful purpose is served to continue to stigmatize Petitioner's Marine Corps service as undesirable. The Board concludes that it would be appropriate and just recharacterize the undesirable discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 30 December 1953 vice the undesirable discharge issued on that date.

b. That a copy of the 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 11 June 2001.

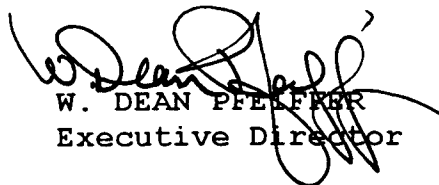
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director