



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

ELP
Docket No. 552-02
10 May 2002

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 type of discharge than the bad conduct discharge issued on 11 April 1946.

2. The Board, consisting of Ms. Humberd, Mr. Rothlein and Mr. Dunne, reviewed Petitioner's allegations of error and injustice on 8 May 2002 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 at age 17 on 22 February 1943 for the duration of the war. At the time of his enlistment, Petitioner had completed nine years of formal education and attained test scores which placed him in Mental Group IV. The record reflects that he was advanced to PFC (E-2) and served for seven months without incident. However, during the five-month period from September 1943 to March 1944, he received three nonjudicial punishments (NJP) for absence from reveille call, a one day period of unauthorized absence (UA), and failure to obey a general order while on post as a sentry.

d. Thereafter, Petitioner served without further incident for more than a year and saw extensive combat action against enemy forces on Guam from 19 August to 3 November 1944, and on Iwo Jima from 21 February to 26 March 1945.

e. On 17 April 1945 Petitioner was convicted by a deck court of failure to obey a general regulation. On 14 June 1945, he was convicted by general court-martial of failure to obey an officer's order to leave the nurse's compound and two specifications of conduct to the prejudice of good order and discipline, by using obscene and profane language in the presence of an Army nurse and another superior officer. He was sentenced to confinement at hard labor for five years, reduction in rank to PVT (E-1), total forfeitures, and a dishonorable discharge.

f. On 25 July 1945 the convening authority approved only so much of the sentence that call for a bad conduct discharge (BCD), confinement for five months and forfeitures of \$20 for six months. Additionally, the BCD was suspended for six months. In taking this action, the convening authority cited Petitioner's extreme youth, previous good record, his courageous service to his country on the field of battle, the extenuating circumstances of the case, the time he had been confined awaiting trial, and exigencies of the service. Petitioner was released from confinement and restored to duty on 25 November 1945.

g. On 27 February 1946 Petitioner was convicted by civil authorities of petty theft and sentenced to 30 days confinement in the county jail. He was released from jail on 29 March 1946 and reported to military authorities on 31 March 1946. The suspended bad conduct discharge was vacated and ordered executed. He was so discharged on 11 April 1946.

h. Petitioner's wife submits a statement that her husband was on Iwo Jima and witnessed the raising of the flag. She states that when he was home on leave, he was at a bar and, as a prank, took another Sailor's jacket and was arrested. He and his father had expected a fine, but ended up serving 30 days in jail. Petitioner's wife states her husband is so ashamed of the actions during his youth and is currently being treated for cancer.

i. The Federal Bureau of Investigation reported that Petitioner has no record of convictions.

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 Petitioner's youth and immaturity, limited formal education, low test scores, and his combat service during World War II. The Board is also aware of his disciplinary record, the general court-martial conviction and the aggravating factor that his probation was violated by a civilian conviction for petty theft. However, the Board believes that the military and civilian offenses were all relatively minor and do not warrant the life-long stigma of a bad conduct discharge. Furthermore, Petitioner put his life on the line for his country during some of the most intense fighting during World War II. It also appears from the FBI report that he has had good post-service conduct since his discharge. Based on all of the foregoing, the Board concludes that it would be appropriate and just to recharacterize the bad conduct discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that he was issued a general discharge by reason of misconduct on 11 April 1946 vice the bad conduct discharge actually issued on that date.

b. That 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 22 January 2002.


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.



for W. DEAN PFEIFFER
Executive Director