



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

ELP
Docket No. 3468-01
31 January 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
(b) Navy-Marine Corps Awards Manual

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 Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 19 May 1972 and that he be awarded the Good Conduct Medal.

2. The Board, consisting of Messrs. Pfeiffer, Pauling, and Harrison, reviewed Petitioner's allegations of error and injustice on 30 January 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 on 22 November 1968 for two years as a PFC (E-2). At the time of his enlistment, he had completed two years in the Regular Army, served in Vietnam, was wounded in action and awarded the Purple Heart Medal.

d. Petitioner began a tour in Vietnam on 17 August 1969 and extended his enlistment for an additional period of two years on 20 September 1969. He was subsequently promoted to CPL (E-4), departed Vietnam in June 1970, and was advanced to SGT (E-5) in September 1970.

e. Petitioner served without incident until 17 March 1971 when he received nonjudicial punishment (NJP) for making a false official statement and was reduced in rank to CPL. He received a second NJP on 3 November 1971 for failure to obey a lawful order and two instances of communicating a threat. Punishment consisted of forfeitures of \$100 per month for two months and 30 days of restriction and extra duty. Both were suspended for three months. However, the suspended punishment was vacated on 22 November 1971.

f. On 15 February 1972, while awaiting trial by court-martial, he was referred for a psychiatric evaluation due to numerous recurrent explosive outbursts and uncontrolled behavior. He was diagnosed with an explosive personality disorder and an aggressive personality. Administrative separation was recommended.

g. On 26 February 1972 Petitioner was convicted by special court-martial of breach of the peace and two specifications of assault. He was sentenced to confinement at hard labor for two months and reduction in rank to LCPL (E-3).

h. On 30 March 1972 Petitioner was notified that action was being initiated to discharge him under honorable conditions by reason of unsuitability due to a character and behavior disorder. He was advised of his procedural rights and declined to consult with legal counsel or submit a statement in his own behalf. Thereafter, the commanding officer recommended a general discharge by reason of unsuitability. He was so discharged on 19 May 1972.

i. Regulations provide that individuals separated by reason of unsuitability receive the type of discharge warranted

by the service record. Character of service is based in part, on conduct and proficiency averages which are computed from marks assigned during periodic evaluations. The final conduct and proficiency averages shown in his record were 4.5 and 4.3, respectively. However, a recomputation of these marks indicates his conduct and proficiency averages were in fact 3.8 and 3.9, respectively. A minimum average mark of 4.0 in conduct was required for a fully honorable characterization of service at the time of his discharge.

j. Eligibility requirements as established by reference (b) requires three years of continuous active service with no court-martial convictions and no more than one NJP.

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 served two tours in Vietnam, both in the Army and the Marine Corps, was wounded in action and awarded the Purple Heart Medal. Furthermore, his discipline problems did not begin until after his return from Vietnam. While the Board does not condone such misconduct, it was not uncommon that many individuals returning from Vietnam often faced significant adjustment problems. Although the conduct and proficiency averages in the record support a fully honorable discharge, those averages appear to be in error. Therefore, the award of a general discharge was within the discharge authority's discretion. Even though Petitioner's misconduct does not constitute fully honorable service, the Board believes it is mitigated by his diagnosed character and behavior disorder and the fact he placed his life in great peril for his country during two tours in Vietnam. Accordingly, the Board concludes that it would be appropriate and just to recharacterize the general discharge to honorable.

Petitioner is not entitled to the Good Conduct Medal in that he received two NJPs prior to completion of three years of continuous active service.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of unsuitability on 19 May 1972 vice the general discharge actually issued on that date.

b. That no further relief be granted.

c. That this Report of Proceedings be filed in Petitioner's naval record.

d. That upon request, the Department of veterans Affairs be informed that Petitioner's application was received by the Board on 30 April 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