



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

CRS
Docket No: 5979-02
18 December 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) Case Summary
(2) 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 that his naval record be corrected to show a more favorable type of separation that the discharge under other than honorable conditions issued on 27 August 1984.
2. The Board, consisting of Ms. McCormick, Mr. Harrison, and Mr. McPartlin, reviewed Petitioner's allegations of error and injustice on 19 November 2002 and, pursuant to its regulations, a majority 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 enclosure (1) was not filed in 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 29 May 1981 at age 17. At that time, he had completed ten years of formal education.
 - d. In December 1981 Petitioner received a meritorious mast for outstanding performance of duty. During his service, he eventually attained the rank of lance corporal (E-3).
 - e. The record also reflects that Petitioner received

nonjudicial punishments on 23 April 1982 and 1 August 1984 and was convicted by a special court-martial on 10 January 1984. The offenses included possession of marijuana, an unauthorized absence of 41 days, two instances of willful disobedience of a lawful order, and failure to obey a lawful order. These disciplinary actions resulted in reductions in rank to private (E-1). Pursuant to the sentence of the court-martial, Petitioner was confined for nearly three months.

f. On 14 August 1984, after Petitioner was advised of administrative separation action and waived his procedural rights, the commanding officer recommended that he be separated with an other than honorable discharge by reason of misconduct due to a pattern of misconduct. The discharge authority approved the recommendation and directed an other than honorable discharge. Petitioner was so discharged on 27 August 1984.

g. In his application, Petitioner gives his version of the events leading to the three disciplinary infractions. He also contends that this discharge was unfair since it did not take his periods of good service into consideration.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Mr. McPartlin and Ms. McCormick, concludes that Petitioner's request warrants favorable action. In this regard, the majority initially notes Petitioner's youth and obvious immaturity, and limited formal education. He also had periods of good service. The majority also believes that although frequent, Petitioner's disciplinary actions were relatively minor. In this regard, the majority notes Petitioner's drug offense, but is also aware that it was not unusual at the time for a one-time drug offender to be retained in the service. Further, the majority notes Petitioner's explanation for his misconduct and believes there may have been some extenuating and/or mitigating circumstances in his offenses. Based on the foregoing, the majority does not believe that Petitioner's record is so bad as to warrant a characterization of under other than honorable conditions. Accordingly, the majority concludes that the discharge should be recharacterized to general.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 27 August 1984 vice the other than honorable discharge issued on that date.

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

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 28 June 2002.

MINORITY CONCLUSION:

The minority member of the Board, Mr. Harrison, disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. He disagrees with the majority and believes that Petitioner's offenses were serious; possession of drugs, an unauthorized absence in excess of 30 days, and three instances of failure to obey a lawful order, two of which were willful. Any of these offenses could have resulted in a punitive discharge. The minority is aware of Petitioner's youth and immaturity, limited education and periods of good service. However, the minority believes that serious misconduct such as Petitioner's

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

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

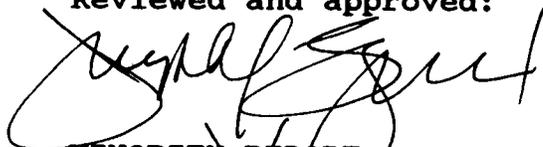
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

JAN 8 2003

MAJORITY REPORT:
Reviewed and approved:



MINORITY REPORT:
Reviewed and approved:

JOSEPH LYNCH
Assistant General Counsel
(Manpower and Reserve Affairs)