



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

SMW

Docket No: 5733-07
7 February 2008

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 to change his RE-4B reenlistment code that was assigned on 9 September 2006, when he was separated with an other than honorable (OTH) discharge by reason of misconduct due to drug abuse.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 February 2008, and pursuant to its regulations, determined that the partial 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. Petitioner's application was filed in a timely manner.

c. On 30 January 2005, Petitioner enlisted in the Marine Corps at age 20.

d. On 25 August 2005, Petitioner had nonjudicial punishment (NJP) for absence from his appointed place of duty. He was also counseled regarding this offense and warned that further infractions could result in disciplinary action or administrative separation. On 3 November 2005, he had NJP for use of an illegal substance on or about 15 August 2005.

e. During the period 11 January to 19 May 2006, Petitioner deployed with his unit to Afghanistan.

f. On 8 August 2006, Petitioner had NJP for absence from his appointed place of duty and a day of UA.

g. Based on the information currently contained in the record, it appears that Petitioner's commanding officer subsequently initiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, it appears that Petitioner elected to have his case heard by an administrative discharge board (ADB) and the separation authority apparently approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to drug abuse. On 9 September 2006, he was so discharged and assigned an RE-4B reenlistment code.

h. On the date of discharge, Petitioner's awards included the Sea Service Deployment Ribbon, Afghanistan Campaign Medal, Global War on Terrorism Service Medal, National Defense Service Medal, and Rifle Expert Badge.

i. In his application, Petitioner requests to change the reenlistment code so that he may enlist in another branch of the armed forces and make his life better for himself and his family.

j. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps, regarding assignment of the RE-4B reenlistment code, which states, in part, as follows:

...[Petitioner's] service record has been reviewed and it has been determined that his reenlistment code of RE-4B was correctly assigned. The reenlistment code was assigned based on his overall record and means that he was not recommended for reenlistment due to in-service drug involvement.

k. Regulations authorize assignment of an RE-4B reenlistment code when an individual is discharged by reason of misconduct due to drug abuse or not recommended for reenlistment due to in-service drug involvement.

l. Regulations authorize an OTH discharge to individuals discharged by reason of misconduct. Regulations also authorize a general characterization of service if separated by reason of misconduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial

relief. Specifically, the Board believes that Petitioner's disciplinary actions were properly taken and his discharge was in accordance with regulations. Therefore, separation by reason of misconduct and assignment of an RE-4B reenlistment code was warranted. However, the Board considers Petitioner's successful deployment to Afghanistan as a rifleman and awards, which occurred after the drug related offense. Therefore, as a matter of clemency the Board concludes that Petitioner's separation should be changed to a general discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge on 9 September 2006, vice the OTH discharge actually issued on that date.

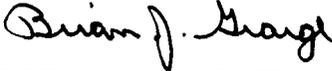
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That no further relief be granted.

d. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 14 November 2006.

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


BRIAN J. GEORGE
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 Regulation, 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