



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

Docket No: 7337-07
21 January 2009

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 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, filed an application with this Board requesting that his discharge be recharacterized to honorable.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 January 2009 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 was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner enlisted in the Marine Corps on 24 September 1956 for four years at age 18. On 16 November 1959 he received nonjudicial punishment for failing to go to his appointed place of duty. A general court-martial convened on 23 June 1960 and convicted him of the theft of adding machines, typewriters and a buffer valued at about \$340, breaking and entering the house of an officer with intent to commit larceny, and the theft of a camera and accessories from a corporal. The court sentenced him to reduction to paygrade E-1, confinement at hard labor for two years and a bad conduct discharge. Subsequently, the confinement was reduced to 19 months. The bad conduct discharge was issued

on 25 August 1961 at the completion of appellate review.

d. On 23 December 1971 President Richard M. Nixon issued Petitioner a full and unconditional pardon for the offenses of which he was convicted by the general court-martial. With his application Petitioner has submitted documentation which describes the expansive reach of a Presidential Pardon as set forth by the U. S. Supreme Court as follows:

A pardon reaches both the punishment prescribed for the offense and the guilt of the offender, and blots out of existence the guilt, so that in the eye of the law the offender is innocent as if he had never committed the offense...if granted after conviction, it removes penalties and disability, and restores him to all his civil rights; it makes him, as if it were, a new man, and gives him new credit and capacity.

e. Attached to enclosure (1) is an advisory opinion from the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division. The opinion recommends that the Board grant the requested relief because Petitioner has provided sufficient proof that his general court-martial conviction and sentence were unconditionally pardoned by President Nixon.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner has been granted a Presidential Pardon and given the legal analysis and the opinion from HQMC as to the scope of such a pardon, the Board concludes that his record should now be corrected to show that he was honorably discharged on 23 September 1960 at the expiration of his four year enlistment vice the bad conduct discharge of 25 August 1961 now of record.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the change in the characterization of his service and reason for discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 23 September 1960 he was issued an honorable discharge by reason of completion of required service vice the bad conduct discharge of 25 August 1961 now of record.

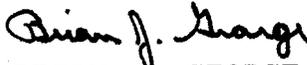
b. That this Report of Proceedings be filed in Petitioner's

naval record.

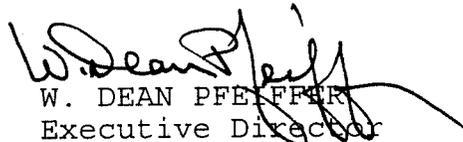
c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 13 August 2007.

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 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