



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

RDZ:ecb
Docket No. 00367-08
13 November 2008

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, applied to this Board requesting that his discharge be upgraded.
2. The Board, consisting of Messrs Butherus, Cooper and Ms. Epstein, reviewed Petitioner's allegations of error and injustice on 4 November 2008 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. Petitioner's application to the Board was filed in a timely manner.
 - c. Petitioner enlisted in the Marine Corps on 15 November 1993 at age 24. For over two years he served in a commendable manner and was eventually promoted to corporal. His only disciplinary action occurred on 19 December 1995 when he received nonjudicial punishment (NJP) for conspiring with another Marine to conceal illegal steroids and wrongful possession of steroids. Petitioner's punishment consisted of reduction in rank to lance

corporal, forfeiture of pay and extra duties. The basic facts leading to his NJP are that he wrongfully agreed to dispose of illegal steroids that were being used by another Marine with whom he was friendly.

d. Following his NJP Petitioner was brought before an administrative discharge board (ADB) where he was represented by a military lawyer. At these proceedings substantial testimony was offered showing that apart from this one incident Petitioner performed his military duties in a capable manner and exhibited all the personal qualities of a good Marine. At the conclusion of these proceeding the ADB found that Petitioner had engaged in misconduct warranting discharge under other than honorable conditions (OTH). However based on his overall record and his sincere desire to complete in his enlistment the ADB unanimously recommended that the OTH discharge be suspended. The Marine officer who commanded the support squadron section to which Petitioner had been assigned favorably endorsed the ADB's recommendation of a suspended discharge and forwarded it to his superior. This officer who commanded the Marine wing support group disagreed with these recommendations citing Petitioner's status as a military policeman and urged immediate execution of the OTH discharge. On 4 December 1996 the Commanding General, Second Marine Aircraft Wing directed that Petitioner be separated with an OTH discharge which was issued on 15 December 1996.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that as a matter of clemency Petitioner's OTH discharge should be upgraded. The Board's bases its recommendation for relief on the isolated nature of his misconduct and his commendable overall service both prior to and after the unfortunate events which led to his discharge. The Board also takes into account the favorable recommendations of the ADB and Petitioner's commanding officer that the OTH discharge be suspended and believes with benefit of hindsight that the ends of justice would be better served by upgrading Petitioner's discharge to general under honorable conditions.

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 Board's action.

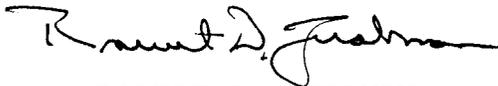
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 15 December 1996 he received a general discharge in lieu of the other than honorable actually issued on that date.

b. That upon request the Department of Veterans Affairs' be informed that Petitioners application was received by the Board on 10 January 2008.

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

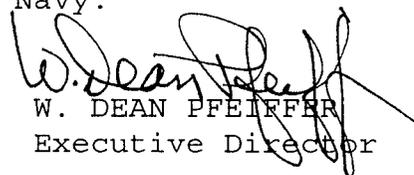
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



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 ensured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director