



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

SMS
Docket No: 1459-08
25 September 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 a general discharge vice the other than honorable (OTH) characterization of service that was issued on 27 November 1990.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 September 2008, and, pursuant to its regulations, the majority, Mr. Pfeiffer and Mr. Zsalman, 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 Petitioner's application 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. On 14 September 1987, Petitioner enlisted in the Marine Corps at age 18. At that time he had completed 12 years of education and attained average test scores. He then served without incident for a year. On 13 September 1988, he was counseled regarding repeated tardiness and warned that further infractions could result in disciplinary action or an OTH discharge. He then served without incident until 14 November 1989, when he was counseled for chewing tobacco during a personnel inspection.

d. On 12 February 1990, Petitioner was convicted by a summary court-martial of failure to go to his appointed place of duty, disobedience of a lawful order, two instances of violating a lawful order, and assault.

e. Based on the information currently contained in the record, it appears that although Petitioner was not diagnosed as being alcohol dependent, he completed a two week alcohol abuse program on 16 March 1990, and was directed to participate in aftercare meetings. On 23 March 1990, he was counseled regarding his inability to manage his finances. On 19 June 1990, a follow-up substance abuse evaluation stated that he previously completed substance abuse treatment, but failed to attend aftercare sessions. On 12 July 1990, Petitioner had nonjudicial punishment for use of provoking speech.

f. On 27 August 1990, Petitioner's commanding officer initiated administrative separation by reason of misconduct due to minor disciplinary infractions and convenience of the government due to alcohol rehabilitation failure, and recommended a general discharge. In connection with this processing, he acknowledged that separation could result in an OTH discharge and elected to have his case heard by an administrative discharge board (ADB). On 3 October 1990, an ADB convened and found that he was guilty of misconduct due to minor disciplinary infractions and recommended an OTH discharge. On 15 October 1990, he was counseled regarding his failure to comply with operating procedures while performing his duties as a motor vehicle operator. On 9 November 1990, the separation authority approved the ADB's recommendation and directed an OTH discharge by reason of misconduct due to minor disciplinary infractions. On 27 November 1990, he was so discharged. At that time his average proficiency and conduct marks were 3.9 and 3.82, respectively.

g. In his application, Petitioner states that he served honorably for more than two years, received multiple letters of appreciation, attained first class physical fitness test scores, but was discharged because of minor misconduct. He requests that his discharge is upgraded to a general discharge so that he may be considered for enlistment in another branch of the armed forces.

h. Regulations authorize issuance of an OTH discharge to service members who are discharged by reason of misconduct due to minor disciplinary infractions. Regulations also authorize issuance of a general discharge for such cases.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, concludes that Petitioner's request warrants relief. The majority finds that Petitioner's two disciplinary actions were proper and his discharge was in accordance with regulations, but also finds that his offenses were relatively minor as evidenced by his commanding officer's recommendation for a general discharge. The majority further finds that Petitioner completed more than 38 months of active service during which he maintained satisfactory proficiency and conduct marks and received three letters of appreciation. The majority believes that no useful purpose is served by characterizing Petitioner's service as having been under OTH conditions. Therefore, as a matter of clemency, the majority finds that the discharge should be upgraded to a general discharge.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 27 November 1990, vice the OTH discharge actually issued on that date.

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

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 11 February 2008.

MINORITY CONCLUSION:

The minority member of the Board, Ms. Wilcher, disagrees with the majority's recommendation to change the OTH discharge to a general discharge, and concludes that favorable action is not warranted. The minority believes that Petitioner's overall service record does not warrant a general discharge, given his misconduct that began one year after enlistment and continued until he was discharged, specifically, he was counseled on four occasions and had two disciplinary actions.

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.



BRIAN J. GEORGE
Acting Recorder

ROBERT D. ZSALMAN
Recorder

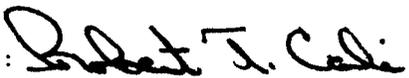
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

MAJORITY REPORT:

Reviewed and approved:

 10-7-08

~~MINORITY REPORT:~~

~~Reviewed and approved:~~