



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

SMS  
Docket No: 1827-08  
14 April 2009

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 undesirable discharge (UD) that was issued on 29 September 1972.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 April 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, and a memorandum furnished by Headquarters Marine Corps.

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. On 15 March 1972, Petitioner enlisted in the Marine Corps at age 20. At that time, he had completed nine years of education which included special education classes from third grade until ninth grade. He had also failed entrance test examinations for the Army and attained below average entrance test scores for enlistment into the Marine Corps.

c. During the period 3 April to 22 June 1972, while at recruit training, Petitioner had nonjudicial punishment on three occasions. His offenses included three instances of unauthorized absence (UA) that totaled 45 days. During the period 2 July to 5 August 1972, he was in a UA status. On 12 September 1972, he requested a UD for the good of the service to avoid trial by court-martial for the 34 day period of UA. On 23 September 1972, the separation authority

approved his request. On 29 September 1972, he was discharged with a UD for the good of the service to avoid trial by court-martial.

d. On 20 May 1980, the Naval Discharge Review Board (NDRB) considered Petitioner's request to upgrade his characterization of service to honorable. The NDRB majority members recommended that no relief be granted because he was found physically and mentally qualified for enlistment and the UD was a result of the approval of his request to avoid a trial by court-martial. The NDRB minority member recommended that his record should be corrected to show that he was separated with a general discharge, given his pre-service mental retardation, which was attested to by long term observation during his elementary school years and the questionable events surrounding his qualifying for enlistment after failing previous entrance tests. His counsel, provided by the Seattle Veterans' Action Center, submitted a rebuttal to the NDRB majority's decision, which stated in essence that he had education problems prior to enlistment, he passed the entrance tests only after he was given the answers by an Army officer, and that he went UA because of his frustration over his inability to cope with training and comprehend written instructions. His counsel also provided evidence that is not contained in the record, of a School District Psychological Services Child Evaluation showing that he had borderline mental functioning and retardation of approximately five years prior to enlistment and he stated that the majority's recommendation is based on their belief that his capability to serve was impaired by his UA's, which is contrary to the facts of his case. Specifically, his counsel stated that his ability to serve was not impaired by his UA's, but by his mental incapacities. His counsel concluded that there is irrefutable evidence showing that he was mentally tested to be below normal as a child and his failure of entrance tests for the Army supports his contention that he only passed the tests for the Marine Corps after being coached by an officer. On 21 October 1980, the Assistant Secretary of the Navy concurred with the NDRB majority members' findings and recommendation.

e. In his application, Petitioner requests that his discharge be upgraded to general so that he may continue to serve in the Coast Guard Civilian Auxiliary. With his application he provided a letter from the Commander, Flotilla-61, Coast Guard Civilian Reserve that states that he is a member, attests to his work ethics and character, and further states that he received an award in 2006 for his contributions to boating safety. He also provided a letter of support from the American Veterans Post 211, which states that he was accepted into their post, has proven himself an asset, and it recommends upgrading his discharge.

f. Regulations authorize service members to request a UD for the good of the service to avoid trial by court-martial. Regulations also authorize the separation authority to approve such a request but to also authorize a general discharge in such cases.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, although his discharge met the requirements established by regulations, the Board finds that he did not warrant a UD due to his aptitude. In this regard, the Board not only agrees with the NDRB's minority opinion, but also with his counsel's contention, that when his case was first considered and found that his documented pre-service mental retardation, failure of previous entrance tests, and the questionable events surrounding his qualifying for enlistment are sufficient bases to characterize his service as general. Furthermore, the Board believes that his limited education and deficiencies in his aptitude did impair his comprehension and ability to serve. Therefore, the Board concludes that his record should be corrected to show that he was separated with a general characterization of service.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 29 September 1972, vice the UD that was actually issued on that date.

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

c. That upon request, Veterans Affairs be informed that Petitioner's application was received by the Board on 25 February 2008.

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.

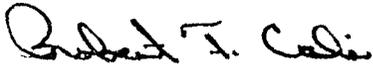
ROBERT D. ZSALMAN  
Recorder

  
BRIAN J. GEORGE  
Acting Recorder

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

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

  
4-27-09  
Robert T. Call  
Assistant General Counsel  
(Manpower and Reserve Affairs)