



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

JRE
Docket No. 02645-08
15 June 2009

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged by reason of physical disability vice by reason of misconduct with a discharge under other than honorable conditions.

2. The Board, consisting of Messrs. [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 March 2009 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. Although enclosure (1) was not filed in a timely manner, the Board determined that it would be in the interest of justice to consider the application on the merits.

c. Petitioner was placed in a temporary not physically qualified (TNPQ) status on 25 August 1995 due to a non-service

related wrist injury. On 3 May 1996, the Inspector-Instructor of his Marine Corps Reserve unit requested that a determination be made as to his physical fitness for retention in the Marine Corps Reserve because of his wrist condition which required him to wear a wrist brace. The available records do not show the disposition of that request. Approximately thirty-four months later, on 17 March 1999, he was removed from TNPQ status because of his failure to provide required medical documentation. On 27 October 1999, he was advised by letter that he had been reduced to private first class because of his unsatisfactory participation and/or performance of reserve training. On 6 June 2000, he was discharged from the Marine Corps Reserve with a discharge under other than honorable conditions by reason of unsatisfactory performance of duty due to his failure to attend required training.

d. Petitioner contends, in effect, that he was excused from attending drills with his reserve unit as a result of a wrist injury. As time went on, and he was unsuccessful in contacting responsible unit medical personnel, he assumed that he had been medically discharged. Several years later he learned that he was being discharged for failing to attend drills, rather than as a result of his injury.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that proper procedures may not have been followed by Petitioner's reserve unit, as a result of which he was believed that he was no longer required to perform reserve training, and later that he had been discharged for medical reasons. In this regard, the Board notes that there is a lengthy gap in the available records between the date on which a determination of his fitness was requested and the date of his removal from a TNPQ status. While Petitioner has not established that he was unfit for duty by reason of physical disability or not physically qualified for further service in the Marine Corps Reserve on the date of his discharge, or that he took all necessary steps to determine his status and responsibility to perform training, it would be in the interest of justice as a matter of clemency to correct his record to show that he was discharged under honorable conditions by reason of Secretarial Authority.

In view of the foregoing, the Board finds an injustice warranting the following corrective action.

RECOMMENDATION:

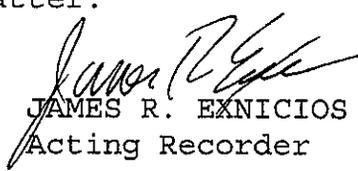
a. That Petitioner's naval record be corrected to show that he was discharged from the Marine Corps Reserve on 6 June 2000 by reason of Secretarial Authority, with a general discharge, vice misconduct with a discharge under other than honorable conditions.

b. That so much of Petitioner's request for correction of his naval record as exceeds the foregoing be denied.

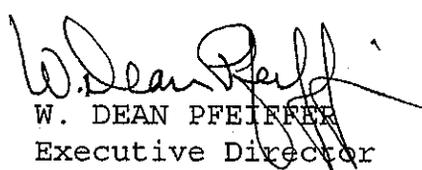
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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


JAMES R. EXNICIOS
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