



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

TJR
Docket No: 3536-08
25 February 2009

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) MCSM 1910.16F

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his uncharacterized entry level separation and fraudulent entry narrative reason for separation from his previous enlistment be changed. His request also implies the change of his "JDA1" separation code.
2. The Board, consisting of Mr. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 February 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. Enclosure (1) was filed in a timely manner.
 - c. Petitioner enlisted in the Marine Corps on 22 March 2004 at the age of 20. Although he served for a brief period, he did so without disciplinary incident.

d. Approximately three weeks into basic training, on or about 13 April 2004, Petitioner complained of breathing complications. As a result, he was dropped from recruiting training due to the possibility of asthma. Subsequently, Petitioner disclosed a prior history of receiving treatment for asthma 3-to-5 years prior to his enlistment.

e. On 28 April 2004, following a medical examination, Petitioner was diagnosed with asthma, a condition that existed prior to his enlistment. The medical record reflects that Petitioner had not disclosed his history of asthma prior to enlistment, and that had he disclosed this information, he would have been disqualified for entry at a Military Entrance Processing Station (MEPS). At that time he was recommended for separation due to his failure to disclose the foregoing medical condition.

f. Subsequently, Petitioner submitted a written statement regarding his medical condition which noted, in part, as follows:

He was not aware of this medical condition before entering MEPS and therefore did not disclose the information; and that he was aware of inhaler usage in the past, but not for use due to any form of asthma.

g. On 29 April 2004 Petitioner was notified of pending administrative separation by reason of fraudulent entry due to his failure to disclose a pre-service medical condition, specifically, asthma. There is no indication in the record that Petitioner had any other problems in recruit training. Nonetheless, he waived his right to submit a statement of rebuttal regarding separation by reason of fraudulent entry and he did not object to the separation.

h. Subsequently, Petitioner was processed for separation due to the diagnosed asthma and on 6 May 2004 was issued an uncharacterized entry level separation by reason of fraudulent entry and assigned an RE-3P reenlistment code.

i. In his application, Petitioner states that he has reenlisted in the Marine Corps Reserve. In this regard, it is presumed that he is serving without any medical problems. He also states that he would like to obtain employment with law enforcement upon his completion of active duty with the Marine Corps Reserve, and that the 'fraudulent entry' narrative reason for separation may hinder his opportunity to do so.

j. Reference (b) authorizes separation by reason of "erroneous enlistment-other" if a Marine failed to meet the regular physical standards, and was "not aware" of a defect and/or medical condition prior to entry in the Marine Corps. Separation for this reason also requires the assignment of a "HFC1" separation code.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable partial action.

The Board believes that Petitioner, although aware of inhaler usage prior to his enlistment, was not aware of ever being diagnosed with any form of asthma during his teenage years. The Board further believes that the use of an inhaler does not necessarily constitute having any form of asthma.

The Board notes that Petitioner was only separated by reason of fraudulent enlistment because it was believed that he did have knowledge of this medical condition prior to entry. The Board further notes that Petitioner has since reenlisted in the Marine Corps Reserve and is presumably serving without any medical problems with an asthmatic condition. As such, the Board believes that no useful purpose is served by continuing to have Petitioner's record reflect a fraudulent enlistment. In this regard, and as an exception to policy, the Board concludes that the narrative reason for separation should be changed to erroneous enlistment and the separation code appropriately changed to HFC1.

The Board also notes that due to Petitioner's brief period of service, while serving in paygrade E-1, an uncharacterized entry level separation is authorized and appropriate, and therefore should not be changed.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the narrative reason for separation, assigned on 6 May 2004, to erroneous enlistment-other.

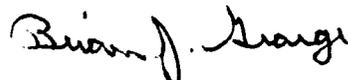
b. That in accordance with the guidelines of reference (b), Petitioner's naval record be corrected by changing the separation code "JDA1" assigned on 6 May 2004, to "HFC1."

c. That no further relief be granted.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

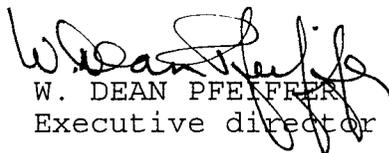
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



BRIAN J. GEORGE
Acting Recorder

ROBERT D. ZSALMAN
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 Regulation, 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