



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

SMS  
Docket No: 4143-08  
6 February 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 4 September 1962.

2. The Board, consisting of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 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. 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 10 July 1958, Petitioner enlisted in the Marine Corps at age 17 with parental consent. At that time, he had completed nine years of education and attained average scores on entrance tests.

d. On 24 August and 30 September 1959, Petitioner had nonjudicial punishment (NJP). His offenses included failure to go to his appointed place of duty, willful disobedience of a lawful order by a noncommissioned officer (NCO), and about one hour of unauthorized absence. On 8 October 1959, he passed the General Education Development (GED) test. On 13 May 1960, he had NJP for disobedience

of a lawful order. On 16 September 1960, he was convicted by a special court-martial (SPCM) for disobedience of a lawful order by an NCO and found innocent for charges of theft of eight M-1 rifles and breaking restriction. On 27 April 1961, he had NJP for failure to obey a lawful order by an NCO by not straggling to chow. On 22 March 1962, he had NJP for dereliction in the performance of his duties as a sentry. On 12 April 1962, he was convicted by a SPCM for two instances of willful disobedience of a lawful order by an NCO and breaking restriction. On 16 August 1962, he was charged with loitering on post and two instances of breaking restriction, but no disciplinary action was taken.

e. On 27 August 1962, Petitioner's commanding officer initiated administrative separation by reason of unfitness, and did not specify the characterization of service that he could receive. In connection with this processing, he acknowledged that he was being recommended for separation by reason of unfitness and waived the right to have his case heard by an administrative discharge board (ADB). On 4 September 1962, he was discharged with a UD by reason of unfitness. At that time, his proficiency and conduct mark averages were 4.0 and 3.8, respectively. On 7 September 1962, the separation authority notified the Commandant of the Marine Corps that he was discharged on 4 September 1962, due to unfitness, and did not indicate the characterization of service that he received.

f. Petitioner states that he has suffered with the UD for 44 years and that is punishment enough for his mistakes as a youth.

g. Regulations authorize issuance of a UD for members discharged by reason of unfitness. Regulations 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, the Board presumes that his discharge was processed in accordance with regulations, but notes that there is no evidence in the record to show that he was made aware that his discharge by reason of unfitness could result in a UD. The Board also finds that the majority of his NJP's resulted from charges by NCO's and are relatively minor as evidenced by his punishment, which included two weeks of restriction and extra duty, and a reduction in rank. Furthermore, the Board finds that although he was convicted by two courts-martial, the majority of the charges were made by NCO's and he was found innocent of serious offenses, but was convicted of relatively minor offenses that resulted in confinement. The Board also considers his youth, satisfactory proficiency and conduct mark averages, and finds no evidence of disrespect. Therefore, as a matter of clemency, the Board concludes that his discharge should be changed to general.

RECOMMENDATION:

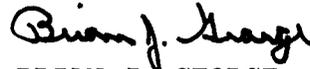
a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 4 September 1962, vice the UD issued on that date.

b. That a copy of 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 25 April 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. 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