



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

SMS
Docket No: 5669-08
20 October 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 and current member of the Marine Corps Reserve, applied to this Board requesting to change the RE-4B reenlistment code that was issued on 19 January 2008, when he was honorably released from active duty.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 October 2008, 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. Petitioner's application was filed in a timely manner.

c. On 20 January 2004, Petitioner enlisted in the Marine Corps at age 23. On 5 November 2004, he was counseled regarding his urinalysis testing positive for marijuana and warned that failure to take corrective action could result in administrative separation. On 1 December 2004, he had nonjudicial punishment (NJP) for use of marijuana. His commanding officer subsequently initiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, he would have acknowledged that separation could result in an other than honorable (OTH) discharge and apparently waived the right to have his case heard by an administrative discharge board. On 11 March 2005, the separation authority approved the discharge recommendation and directed an OTH

discharge by reason of misconduct due to drug abuse, but suspended the discharge for a period of 12 months. He then served without incident, attained pay grade E-3, and was awarded the Good Conduct Medal (GCM) on 1 December 2007. On 19 January 2008, he was honorably released from active duty due to completion of required active service and assigned an RE-4B reenlistment code. At that time his average proficiency and conduct marks in service were both 4.0, and in grade marks were 4.4 and 4.5, respectively.

d. Attached to enclosure (1) is an advisory opinion from the Headquarters Marine Corps, Performance Evaluation Review Board (PERB), which states, in part, as follows:

...On January 19, 2008, [Petitioner] was honorably discharged by reason of completing required active service. At the time of separation, [he] was assigned a reenlistment code of RE-4B, which indicates he was not recommended for reenlistment due to in-service drug involvement. A review of the administrative portion of his record indicates that he was counseled on his illegal drug use, not eligible for promotion to Private First Class, recommendation [sic] for possible separation from active service. The disciplinary portion of the record shows that he received one [NJP]...for use of marijuana.

...After a review of all relevant information, we concur with the professional evaluation of [his] qualifications for reenlistment at the time of separation. Since his reenlistment code is correctly assigned, no change is warranted...

e. In his application, Petitioner states in essence that he believes the reenlistment code was a mistake that resulted from career planning interviews conducted outside of his command on holidays. He further states that he believes his situation is unique because he maintained high proficiency and conduct marks, was awarded a GCM, honorably completed his service, and is still a member of the Marine Corps Reserve. He requests to change the reenlistment code so that he can continue to serve in the reserves.

f. Regulations state that service members who have confirmed illegal use, possession, sale, or distribution of a controlled substance will not be granted a waiver to reenlist. Regulations further direct assignment of an RE-4B reenlistment code when a service member has a military or civil record of in-service illegal drug involvement and there is no potential for further service. Regulations also authorize assignment of an RE-3C reenlistment code when a service member is not eligible for reenlistment and a disqualifying factor is not covered by any other code.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board finds that his disciplinary action, suspended discharge, and honorable release from active duty are in accordance with regulations. However, the Board finds that his disciplinary action and suspended discharge occurred almost three years before he was honorably released from active duty. The Board further finds that he is still a member of the Marine Corps Individual Ready Reserve and is subject to recall to active duty at any time. Therefore, the Board finds that he does not fully meet the requirements for assignment of an RE-4B reenlistment code, since he does have potential for further service. The Board further considers his above average proficiency and conduct marks and the awarding of the GCM. Therefore, the Board finds that the RE-4B reenlistment code should be changed to an RE-3C.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was assigned an RE-3C reenlistment code on 19 January 2008, vice the RE-4B.

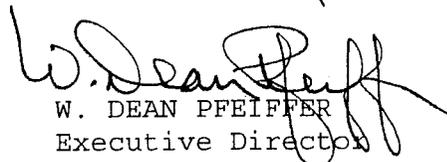
b. That this Report of Proceedings be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in his record.

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.

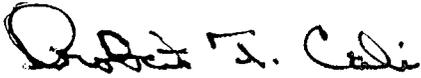
ROBERT D. ZSALMAN
Recorder


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:


10-31-08

Robert T. Cali
Assistant General Counsel
(Manpower and Reserve Affairs)