



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

RDZ:ecb
Docket No. 06432-08
28 August 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) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, applied to this Board requesting that his discharge be upgraded.

2. The Board, consisting of Mses. Epstein, Mann and Mr. Wade reviewed Petitioner's allegations of error and injustice on 19 August 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 to the Board was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 15 July 2002 for five years at age 17. He served without any disciplinary infraction until 22 August 2005 when he received nonjudicial punishment (NJP) for failure to obey a lawful order or regulation. No other details were available. Less than a month later he received a second NJP for sitting down on post while

smoking a cigarette and not having his blouse, cover and M16 service rifle. His third NJP occurred over a year later on 14 September 2006 for two instances of failure to go his appointed place of duty. Based on his three NJPs Petitioner was taken before an administrative discharge board (ADB) whose members recommended that he be separated with an other than honorable (OTH) discharge. However two members, including the senior member, recommended that the discharge be suspended in order to allow Petitioner, who was nearing the end of his five year enlistment, to serve out his time and earn a better discharge. Unfortunately for Petitioner the separation authority concurred with the dissenting member and Petitioner received an OTH discharge on 23 January 2007. At the time of discharge Petitioner had less than six months to serve on his five year enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that as a matter of clemency Petitioner's OTH discharge should be upgraded to general under honorable conditions. In reaching this conclusion the Board takes into account his first three years of creditable service, the minor nature of his offenses and the majority recommendation of the ADB that Petitioner's discharge be suspended in order to allow him to complete his enlistment. Nevertheless in view of his repeated acts of misconduct Petitioner's request for an honorable discharge should be denied.

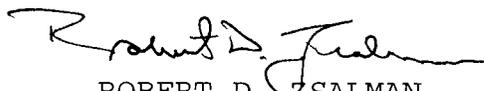
The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the Board's action.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 23 January 2007 he received a general discharge in lieu of the other than honorable actually issued on that date.
- b. That Petitioner's request for an honorable discharge be denied.
- c. That upon request the Department of Veterans' Affairs be informed that Petitioner's application was received by the Board on 9 June 2008.

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

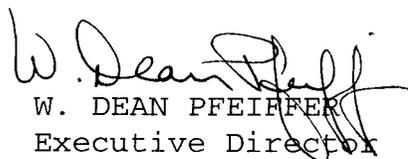
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

BRIAN J. GEORGE
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having ensured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director