



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

SMS
Docket No: 6637-08
25 March 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 member of the Marine Corps, applied to this Board requesting to upgrade the bad conduct discharge (BCD) that was issued on 29 October 1971.

2. The Board, consisting of Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 March 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 August 1968, Petitioner enlisted in the Marine Corps at age 17 with parental consent. At that time, he had completed ten years of education and attained average scores on entrance tests.

d. On 4 November 1969, Petitioner reported to Vietnam for duty as a rifleman and served as a fire team leader and later as a squad leader. His medical record shows that during his tour in Vietnam he received treatment for boils, migraine headaches, cysts, and stomach cramps. On 1 October 1970, he departed Vietnam after having participated in the defense of the Danang area, operations against

insurgent communist aggression in Quang Nam Province, and Operations Pickens Forest and Nebraska Rapids. His awards included the Combat Action Ribbon, Vietnam Service Medal with a star, Republic of Vietnam Campaign Medal with a device, and the National Defense Service Medal, and his proficiency and conduct mark averages were 4.28 and 4.26, respectively.

e. On 4 November 1970, Petitioner began a period of unauthorized absence (UA) when he failed to comply with orders to report to a stateside duty station. On 1 December 1970, he surrendered after having been UA for about 27 days. During December 1970, his medical record shows that he continued to receive treatment for cysts and swollen glands. On 23 December 1970, he was convicted by a special court-martial (SPCM) of the 27 day period of UA in which the punishment included reduction in rank, forfeitures of pay, restriction, and hard labor without confinement. During the period 5 March to 29 June 1971, he was in a UA status on four occasions that totaled about 100 days. On 20 July 1971, he was convicted by a SPCM of the four periods of UA that totaled 100 days. His sentence included confinement at hard labor, forfeitures of pay, and a BCD. On 21 September 1971, he received a psychiatric evaluation that resulted in no diagnosis. His medical record shows that he continued to receive consultations for boils. After the BCD was approved at all levels of review, on 29 October 1971, he was so discharged.

f. Petitioner states that there is no error or injustice, but he was 19 years of age when he was discharged and had given up on himself when he returned from Vietnam. He further states that he served honorably in Vietnam and asks for the status of his discharge to be changed not so much for himself, but for his son, and that an upgrade would also allow him to have the examination that Veterans Affairs offers for Agent Orange poisoning. He concludes by stating that he knows that the Board will do this because it is the "right thing to do."

g. The law and regulations authorize issuance of a BCD for members who are convicted by a SPCM and the punishment imposed includes such a discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board believes that his SPCM conviction and punishment that included a BCD was in accordance with the law and regulations, but finds that the offenses for which he was convicted of occurred after he returned from combat duty in Vietnam. Furthermore, the Board considers his age at the time of his enlistment, limited education, unblemished service in Vietnam in which he served in fire team and squad leadership billets, and his awards that included a Combat Action Ribbon. The Board also believes that he deserves to be eligible for benefits offered by Veterans Affairs, given his service in Vietnam and medical problems noted throughout his record that began while he was serving in Vietnam. Therefore, as a matter of clemency, the Board concludes that his discharge should be changed to general.

RECOMMENDATION:

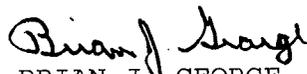
a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 29 October 1971, vice the BCD that was issued on that date.

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 9 July 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