



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

TRG
Docket No: 8893-08
14 January 2009

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 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 Reserve, filed an application with this Board requesting, in effect, that his record be corrected to show that he was not a deserter and was honorably discharged on 13 July 2001.

2. The Board, consisting of Mr. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 6 January 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 it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner enlisted in the Marine Corps Reserve on 28 January 2000 at age 18. The record shows that he completed an initial period of active duty for training on 4 November 2000. On 8 June 2001, his request for a conditional release from the Marine Corps Reserve for the purpose of enlistment in the Air National Guard was approved. He enlisted in the Kentucky Air National Guard on 14 July 2001.

d. Apparently, the Marine Corps Reserve unit was unaware of his enlistment in the Air National Guard because on 5 February 2003 he was declared a deserter by the Marine Corps Reserve when he did not respond to activation orders. He has submitted documentation showing that he was recalled to active duty by the Air National Guard on 29 August 2003 and that he was released from active duty on 31 March 2004.

e. There is no discharge processing documentation or a discharge entry filed in Petitioner's Marine Corps Reserve record. However, there may be computer entries showing an adverse separation program designator and characterization of service.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. It is clear that Petitioner should have been honorably discharged from the Marine Corps Reserve on 13 July 2001, the day prior to his enlistment in the Air National Guard. Therefore, Petitioner's record and Marine Corps Reserve databases including the Marine Corps Total Force System should be reviewed and corrected wherever necessary to show that he was and is not a deserter and that he was honorably discharged on 13 July 2001. Other agencies which were informed of the desertion should be informed of this correction. Any Marine Corps Reserve entries after 13 July 2001 should be deleted.

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 circumstances of his case and that he was honorably discharged from the Marine Corps Reserve on 13 July 2001.

RECOMMENDATION:

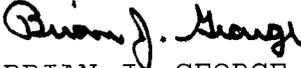
a. That Petitioner's naval record and Marine Corps Reserve databases be corrected to show that he was and is not a deserter and that he was honorably discharged on 13 July 2001.

b. That 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 revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, 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