



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

SMS
Docket No: 11631-08
6 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 enlisted member of the Marine Corps applied to this Board requesting to change the RE-4 reenlistment code that was issued on 2 July 2007, when he was released from active duty under honorable conditions. He is currently serving in the Marine Corps Reserve.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 4 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, and a memorandum furnished by Headquarters Marine Corps.

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 3 July 2003, Petitioner enlisted in the Marine Corps at age 18 and subsequently served as a rifleman. On 6 February 2004, he had nonjudicial punishment (NJP) for drunk and disorderly conduct and underage drinking. On 13 February 2004, he deployed to Iraq with his infantry unit. On 13 March and 5 June 2004, he had NJP for breaking restriction by going to the recreation center, assault, and use of provoking words. On 2 July 2004, it appears that suspended punishment from an NJP was vacated and he was reduced in rank and as such he was assigned reduction (RD) proficiency and conduct marks of 4.2 and 1.9, respectively. On 28 July 2004, he was counseled regarding his disciplinary actions and given a discharge warning. On

31 July 2004, he was assigned semi-annual (SA) proficiency and conduct marks of 4.0 and 1.0, respectively. On 17 September 2004, he departed Iraq with his unit. On 16 December 2004, he was convicted by a summary court-martial of consuming alcohol while underage and another offense that is not contained in the record. During the period 6 July 2005 to 29 January 2006, he was deployed again to Iraq with his infantry unit. On 1 October 2006, he was promoted to pay grade E-3. On 19 June 2007, a service record entry was made which stated that he was not recommended for reenlistment due to his conduct mark average not being within retention guidelines and was being assigned an RE-4 reenlistment code. On 2 July 2007, he was released from active duty under honorable conditions due to completion of required active service and assigned an RE-4 reenlistment code. At that time his awards included the Combat Action Ribbon, Sea Service Deployment Ribbon with one star, Iraq Campaign Medal, Global War on Terrorism Service Medal and Expeditionary Medal, National Defense Service Medal, and a letter of appreciation.

d. Attached to enclosure (1) is a memorandum from Headquarters Marine Corps, Performance Evaluation Review Branch, which states, in part, as follows:

...[Petitioner's] service record has been reviewed and it has been determined that at the time of separation he was assigned a reenlistment code of RE-4, which means that he was not recommended for reenlistment. The reenlistment code was correctly assigned and was based on his overall record...

...[Petitioner] was informed that that [sic] he was not eligible for reenlistment and that his reenlistment code of RE-4 would be assigned. The disciplinary portion shows that [Petitioner] received three [NJP's and a SCM]...

After a review of all relevant information, this Headquarters concurs in the professional evaluation of [Petitioner's] qualifications for reenlistment at the time of his separation...

e. In his application, Petitioner states in essence that he was given an RE-4 reenlistment code because his proficiency and conduct marks were below 4.0, but there was an administrative error that led to this mistake. He further states that he was assigned proficiency and conduct marks on two occasions during July 2004, and he should have only been assigned marks on one occasion during that month. He further states that he had no disciplinary actions after December 2004, his conduct improved, and he served a second tour of duty in Iraq before he was released from active duty under honorable conditions.

f. Regulations state that Marines serving on active duty in pay grade E-4 and below will receive SA proficiency and conduct marks on 31 January and 31 July, and Marines who have received proficiency and conduct marks within the prior 90 days will receive SA proficiency and conduct marks of "not available" (NA). Regulations also state that a Marine's reenlistment prerequisite is to have a minimum average in-service proficiency and conduct mark of 4.0 and this will not be waived. Regulations further state that basic reenlistment prerequisites for a Marine is to have no court-martial convictions and no more than two NJP's during his/her current enlistment contract, but that those prerequisites may be waived. Regulations further state that a Marine may be assigned an RE-3C reenlistment code when directed by the Commandant of the Marine Corps or when not eligible 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 SA proficiency and conduct marks reported on 31 July 2004, are erroneous since he had received marks on 2 July 2004, and as such marks of NA should have been reported. The Board further finds that excluding the erroneous SA marks, his in-service proficiency and conduct mark average is 4.2 and 4.0, respectively, which meets the reenlistment prerequisite. The Board also notes that the service record entry dated 19 June 2007, states that he was not recommended for reenlistment due to his conduct mark not being within retention guidelines, but the entry does not specify any other reason. The Board also finds that his disciplinary actions are waiverable reenlistment prerequisites and notes that they occurred within about a ten month period of time and further finds that he served without incident during his last 30 months of active duty. The Board also considers his two deployments to Iraq, awards, and present status in the Marine Corps Reserve. Therefore, the Board finds that the SA proficiency and conduct marks that were reported on 31 July 2004, should be removed and corrected to show that NA marks were reported on that date, and that his reenlistment code be changed to RE-3C vice the RE-4 that was actually assigned on 2 July 2007.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was assigned an RE-3C reenlistment code on 2 July 2007, vice the RE-4.

b. That Petitioner's naval record be further corrected in the Marine Corps Total Force System (MCTFS) by deleting the SA marks dated 31 July 2004, and report marks of NA for that occasion.

c. That Petitioner's naval record be further corrected by removing any service record pages and MCTFS printouts that show the SA marks of 4.0 and 1.9, respectively, that were reported on 31 July 2004.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purposes, with no cross reference being made a part of 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.

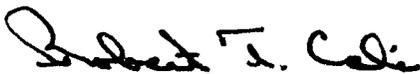
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:



3-19-02

ROBERT T. CALI
Assistant General Counsel
(Manpower and Reserve Affairs)