



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

SMS  
Docket No: 12014-08  
31 March 2009

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

Subj: REVIEW OF NAVAL RECORD OF E [REDACTED]  
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Case Summary with memorandum  
(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 an honorable discharge and an RE-1 reenlistment code vice the other than honorable (OTH) discharge and RE-4 reenlistment code that was issued on 7 July 1983.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 25 March 2009, and pursuant to its regulations, determined that the limited 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, applicable statutes, regulations and policies, and a memorandum provided by Headquarters Marine Corps (HQMC), a copy of which is attached.

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 4 November 1980, Petitioner enlisted in the Marine Corps at age 18. At that time, he had completed 12 years of education, but attained below average scores on entrance tests. On 3 March 1981, he was dropped from a formal military occupational specialty school due to academic reasons and subsequently began serving as a rifleman with an infantry unit. On 28 August 1981, he had nonjudicial punishment (NJP) for a three hour period of unauthorized absence (UA). He was subsequently counseled for returning late from leave and warned that

further infractions could result in disciplinary action. During the period 24 March 1982 to 21 February 1983, he had NJP on three occasions and a suspended punishment was vacated. His offenses included failure to go at the time prescribed to a dental appointment, three instances of violation of a lawful general order by not wearing his rank insignia on his utility uniform and field jacket, and breaking restriction. On 21 February 1983, he was counseled regarding his misconduct and warned that further infractions could result in disciplinary action or administrative separation. On 5 April 1983, he had NJP for two instances of dereliction in the performance of his duties due to the loss of a radio while he was assigned duties as a gear guard and his failure to report the missing gear. On 12 May 1983, he had NJP for operating a car while intoxicated.

d. On 25 May 1983, Petitioner's commanding officer initiated administrative separation by reason of misconduct due to minor disciplinary infractions. In connection with this processing, he acknowledged that separation could result in an OTH discharge and waived the right to have his case heard by an administrative discharge board (ADB). On 5 July 1983, the separation authority approved the recommendation and directed an OTH discharge by reason of misconduct due to minor disciplinary infractions. On 7 July 1983, he was so discharged. At that time, his proficiency and conduct mark averages were 3.4 and 4.0, respectively.

e. Petitioner states in essence that the disciplinary actions in his record are unfounded and it is his personal belief that he was accused of offenses without any evidence.

f. Regulations authorize issuance of an OTH discharge for members separated by reason of misconduct. Regulations also authorize a general discharge in such cases. Furthermore, regulations authorize assignment of an RE-4 reenlistment code when a member is not recommended for retention.

g. Attached to enclosure (1) is a memorandum from the Headquarters Marine Corps (HQMC) Performance Evaluation Review Branch, Manpower Management Division dated 11 December 2008, 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 is not recommended for reenlistment.

...[Petitioner] was honorably [sic] discharged Under [OTH] Conditions by reason of misconduct... The disciplinary portion of his record shows that [Petitioner] had no less than six [NJP's]...

...After review of all relevant information, this Headquarters concurs in the professional

evaluation of [Petitioner's] qualifications for reenlistment at the time of separation...

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, the Board agrees with the memorandum provided by HQMC regarding assignment of an RE-4 reenlistment code and finds that his discharge was processed in accordance with regulations, but finds that his overall service did not warrant an OTH discharge. In this regard, with the exception of his last offense, the rest of his misconduct was relatively minor and was not flagrant violations of the law or regulations. In this regard, the Board noted that there is no evidence in the record of disrespect or lengthy UA's. The Board also considers his youth, below average scores on entrance tests, and satisfactory proficiency and conduct mark averages. Therefore, given his misconduct, the Board concludes that as a matter of clemency, he should be granted partial relief and as such 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 7 July 1983, vice the OTH discharge that was issued on that date.

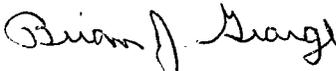
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 11 December 2008.

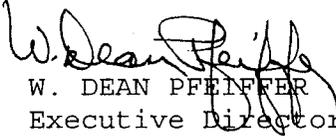
d. That Petitioner's request to change his RE-4 reenlistment code be denied.

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