



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

BAN
Docket No: 01519-09
14 April 2009

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

Subj: REVIEW OF NAVAL OF RECORD [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) HQMC memo 1040 MMER/RE of 6 Feb 09
(3) HQMC memo 1040 MMEA of 29 Jan 09
(4) United States Department of Justice, Federal Bureau of Investigation report dtd 26 Mar 09
(5) Office of Sheriff, Beaufort County, South Carolina dtd 30 Mar 09
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his reenlistment code (RE-4) be changed.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 March 2009. Pursuant to its regulations, the Board 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 17 February 1990. During Petitioner's period of service he received two nonjudicial punishments (NJP's), one in October 1990, for consuming alcohol under the age of twenty-one and failure to obey a lawful order, and another one in June 1994, for failure to obey a lawful order. In addition, he was counseled in March 1994, for driving while intoxicated.

d. On 9 November 2001, there was a domestic dispute between Petitioner and his girlfriend at their apartment in Beaufort, South Carolina. Petitioner stated that during the argument, he had pushed her, causing her to hit her head on a table. However, she was still coherent and went to bed later that evening. The next morning, Petitioner left for work. Later that day, when he came home for lunch, Petitioner stated that his girlfriend was lying on the floor and was dead. At this time, Petitioner was initially charged with murder, but after an autopsy and toxicology report stated the cause of death was an overdose due to alcohol and sleeping medication, the charges were then reduced to criminal domestic violence in October 2002. While the charges were pending in civil court, in December 2003, Petitioner's command allowed him to reenlist, but stated that he needed to seek final resolution of his pending civil charges. However, in the four years that followed his reenlistment, Petitioner failed to seek final legal action in his case. At the end of his obligated service on 12 February 2008, Petitioner had 17 years and 11 months of active duty service. At this time, his command did not recommend him for retention because he failed to demonstrate the high standards of leadership, professional competence, and personal behavior required to maintain the prestige and quality standards of the Marine Corps, by failing to resolve his civil charges in a timely manner. However, his command did provide him a 30 day extension to allow him to put his legal affairs in order. He failed to do so. As a result, Petitioner was separated with an honorable discharge and an RE-4 reenlistment code.

e. In Petitioner's application, he notes that his RE-4 code was unjust due to his past good conduct medals and the fact that he was allowed to reenlist after he was charged with criminal domestic violence in October 2002.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner is entitled to the relief requested. The Board finds that although he committed misconduct, the main issue was his civil charge that eventually resulted in a non-conviction and the civil authorities did not

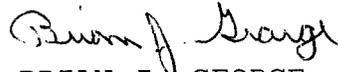
prosecute the charge. In 2008, when Petitioner was being considered for separation, the commanding officer took into account all of his military service, including his legal situation and his past misconduct. However, the Board finds that in light of Petitioner's exemplary military career for over 17 years and 11 months, separating the member from military service, just short of the 18 year "sanctuary" was unjust. Furthermore, the Board believes that the fact that the case not being resolved in a timely manner did not solely rest with the Petitioner, but the district attorney as well, who failed to prosecute the case. Based on the foregoing, and considering the fact that Petitioner has since resolved the civilian criminal issue, that resulted in a non conviction, the Board believes that Petitioner's reenlistment code should be changed from an RE-4 code to an RE-1. In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

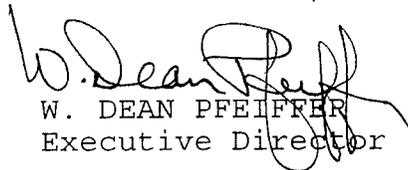
a. That Petitioner's naval record be corrected to show that he was issued an RE-1 reenlistment code on 12 February 2008, at the completion of his obligated service.

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.

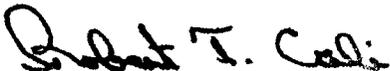
ROBERT D. ZSALMAN
Recorder


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:


4-27-09

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)