



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

BAN  
Docket No: 01564-09  
13 May 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) Case summary  
(3) 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-3C) be changed.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 April 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 it appears that enclosure (1) 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. Petitioner enlisted in the Marine Corps on 26 November 1996. During his period of service he received one nonjudicial punishment (NJP) on 13 September 2001, for driving under the influence (DUI) of alcohol.

d. After the incident, Petitioner conducted himself in an appropriate manner and maintained his evaluations with above average marks. In Petitioner's application, he notes his past mistake and immaturity and is deeply remorseful for his lack of judgment. He additionally states that although he received an NJP for DUI, that he was allowed to stay in the Marine Corps for another three years without incident, serving in an exemplary manner.

e. An RE-3C means that Petitioner's reenlistment can only be authorized by the Commandant of the Marine Corps. An RE-1 means that he was recommended for reenlistment.

f. Headquarters Marine Corps, in their advisory opinion, stated that since Petitioner received an NJP for DUI, that the RE-3C was appropriate and should not be changed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner is entitled to relief based on his exemplary military service before and after the incident. The Board believes his DUI was an isolated event and not a part of a pattern of bad judgment. The Board notes the advisory opinion states that "Marines who are guilty of Driving Under the Influence (DUI) or Driving While Intoxicated (DWI), on or off base" are not qualified to reenlist. However, the advisory opinion fails to state, that although a Marine is not qualified to reenlist, he may be allowed a waiver. The Board believes that since the incident took place over three years before the date of his discharge that an RE-1 code is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an RE-1 reenlistment code on 25 November 2004 vice the RE-3C reenlistment code that was issued on the same day.

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

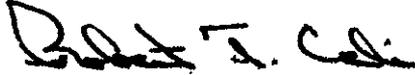
  
BRIAN J. GEORGE  
Acting Recorder

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



for W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:



5-27-09

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