



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

RDZ:ecb
Docket No. 01623-09
20 January 2010

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) DD Form 149 with attachments
(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 that the characterization of his discharge be changed.

2. The Board, consisting of Mr. Spain, Ms. McCormick and Ms. Colbert, reviewed Petitioner's allegations of error and injustice on 12 January 2010 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 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 3 May 1961 at 18 years of age. From May 1961 until March 1963 Petitioner

earned solid performance marks and had no disciplinary infractions. Unfortunately on 4 March 1963, pursuant to his plea of guilty to a charge of assault, a civil court sentenced him to pay a fine of \$500.00. Due to his conviction Petitioner was referred to an administrative discharge board (ADB) for the purpose of determining whether or not he should be retained or discharged. In his written referral of Petitioner's case to an ADB his commanding officer recommended that Petitioner be retained based in part on the fact that Petitioner was a good worker and the fact that he had no prior disciplinary infractions. Petitioner obviously believing, albeit mistakenly, that his commanding officer's recommendation would be accepted by the ADB waived his right to be represented by a military lawyer.

d. On 30 April 1963 the ADB convened and despite the recommendation of Petitioner's commanding officer decided that Petitioner should be discharged with an undesirable discharge based on its belief that his conviction showed that he was likely to be a danger to himself and others if retained. Petitioner was so discharged on 24 May 1963.

e. Since his discharge in 1963 Petitioner has been a law abiding citizen who recently retired from the Verizon Corporation.

CONCLUSION:

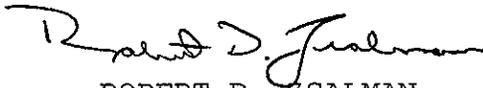
Upon review and consideration of all the evidence of record, the Board concludes that favorable action is warranted.

The Board bases its recommendation on the isolated and minor nature of Petitioner's offense as well as the absence of aggravating circumstances which is attested to by the fact that the civil court, as part of its sentence, could have ordered a period of confinement but instead chose only to impose a fine. Moreover with the benefit of hindsight and as evidenced by Petitioner's post service conduct, the ADB's opinion that he would be a danger to himself and others was wrong.

In view of the foregoing the Board believes that the interests of justice would be better served by changing Petitioner's discharge from undesirable to general under honorable conditions.

RECOMMENDATION:

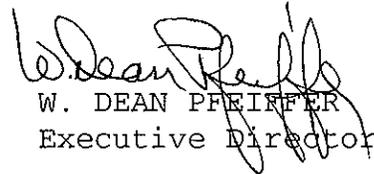
- a. That Petitioner's naval record be corrected to show that he was issued a general discharge under honorable conditions on 24 May 1963 vice the undesirable discharge.
 - b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
 - c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 23 January 2009.
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 provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director