



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

TJR  
Docket No: 3947-09  
4 March 2010

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

Subj: REVIEW NAVAL RECORD OF [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 the characterization of his other than honorable discharge be changed and that his record be corrected to reflect the time he served on active duty.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 March 2010 and, pursuant to its regulations, determined that the partial 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 14 August 1975 in the Delayed Entry Program at age 19. On 2 December 1975 he began a four-year period of active duty.

d. During Petitioner's period of service he received nonjudicial punishment (NJP) for a seven day period of unauthorized absence (UA) and was awarded a \$400 forfeiture of pay and reduction to paygrade E-2.

e. On 1 August 1978 Petitioner began another period of UA. As a result, he was subsequently processed for an administrative separation by reason of misconduct due his absence without leave. In this regard, this UA terminated his period of service on active duty.

f. The record reflects that during the period from 15 August 1983 to 1 February 1984 administrative processing had been initiated, but was not completed. The record further reflects that Petitioner was not made aware of the foregoing action. In this regard, there is no available information to explain the five-year gap from 1 August 1978 (initial administrative discharging processing) to 15 August 1983 (subsequent administrative discharge processing).

g. Petitioner's record contains an enlisted performance record (page 9) that reflects that he served on active duty from 2 December 1975 to 1 August 1978, a period of two years, 11 months, and 30 days.

h. In Petitioner's application, he states, in part, that his Certificate of Discharge or Release from Active Duty (DD Form 214) does not reflect the time he served on active duty.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The Board notes the nature of Petitioner's misconduct and does not condone his infractions. However, the Board's finding is based on his record of service for two years, seven months, and 30 days as depicted by the entries on his enlisted performance record. The Board concludes that although he should be credited for the time he served, because he began a indefinite period of UA and was presumably discharged in absentia, the characterization of his service should remain as under other than honorable conditions. Based on the foregoing, and considering the fact that he has suffered the consequences of not having a viable DD Form 214 which reflects his time served in the Marine Corps, the Board concludes that the issuance of a corrected DD Form 214 is appropriate at this time.

In view of the foregoing, the Board finds the existence of an injustice warranting the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected as follows, and that he be issued a corrected DD Form 214:

(1) Correct the DD Form 214, block 12.b to reflect that Petitioner was discharged on 1 August 1978 vice 1 February 1984.

(2) Correct the DD Form 214, block 12.c. to reflect that Petitioner served on active duty for 2 years, 11 months, and 30 days.

(3) Correct the DD Form 214, block 12.h. to reflect the effective date of paygrade as 13 July 1978.

(4) Correct the DD Form 214, block 23. to reflect that Petitioner was discharged, in absentia.

(5) Correct the DD Form 214, block 28. to reflect that Petitioner was discharged by reason of misconduct due to unauthorized absence.

(6) Correct the DD Form 214, block 29. to reflect a period of lost time from 5-12 July 1978.

b. That no further relief be granted.

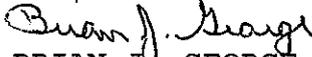
c. That only the material inconsistent with or relating to the Board's recommendation regarding the corrected DD Form 214, be removed from Petitioner's record. Further, that any material directed to be removed from Petitioner's record be returned to the Board, together with a copy of this Report of Proceedings.

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

e. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 17 April 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 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