



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

BAN  
Docket No. 08623-09  
28 May 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) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting a general discharge with Department of Veterans Affairs (DVA) benefits, vice a general discharge pursuant to the Special Discharge Review Program (SDRP) without DVA benefits issued on 19 June 1978.

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 May 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. Petitioner enlisted in the Marine Corps on 3 January 1968. He served in Vietnam immediately following basic training and was awarded the Combat Action Ribbon (CAR), Republic of Vietnam Meritorious Unit Commendation, National Defense Service Medal and the Vietnam Service Medal.

c. While stationed in Vietnam, Petitioner received the following disciplinary actions: on 12 September 1968, he received nonjudicial punishment (NJP) for an unauthorized absence (UA); on 7 January 1969, he was convicted by a special court-martial (SPCM) for UA in excess of six weeks and breaking restriction; on 31 July 1969, he received NJP for failure to obey a lawful order; on 27 August 1969, he was convicted at a SPCM for failure to obey a lawful order and possession of a controlled

substance (marijuana); and on 25 April 1970, he was convicted at a summary court-martial for UA. Further, he was pending a court-martial for being UA for 62 days and possession of a controlled substance (marijuana). However, he was separated in lieu of a trial by court-martial, and on 18 September 1970, he received an undesirable discharge.

d. In August 1977, an SDRP changed the characterization of Petitioner's discharge to a general discharge in accordance with the provisions of President Ford's proclamation. On 22 May 1979, the recharacterization was not affirmed under Public Law 95-126, thus denying him eligibility for DVA benefits.

f. Petitioner argues that he is a Vietnam combat veteran who suffered with posttraumatic stress disorder (PTSD), anxiety, and major depressive disorder which caused his misconduct.

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Petitioner served in Vietnam and received a CAR. The Board believes that his offenses were due to his undiagnosed PTSD, anxiety, and major depression. The Board does not condone his misconduct, but believes clemency is warranted in this case. Since he is not eligible for veterans' benefits based on his recharacterized discharge under the SDRP and given the passage of time, the Board concludes that the discharge should now be upgraded to general under honorable conditions.

#### RECOMMENDATION:

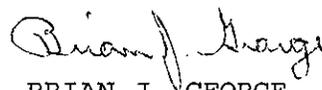
That Petitioner's naval record be corrected, where appropriate, as follows:

a. That Petitioner's naval record be corrected to show that he received a general discharge under honorable conditions on 18 September 1970, vice the general discharge under the SDRP.

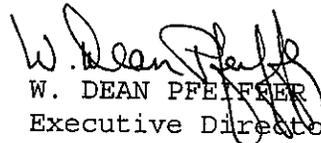
b. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that 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 authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director