



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

RDZ:ecb
Docket No. 09306-10
10 January 2011

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) PLT Leader ltr dtd 1JUL08
(3) Subject's ltr dtd 4AUG08
(4) BN CO ltr dtd 6OCT08
(5) HQMC Code MMR memo dtd 18AUG10 w/attachments
(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 Messes Guill, Henkel and Siler, reviewed Petitioner's allegations of error and injustice on 5 January 2011 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 20 September 2004 for a term of four years. He had no disciplinary infractions until 3 January 2006 when he received nonjudicial punishment for being in

possession of a camera that had been reported as stolen. Petitioner was reduced to private first class (E-2), ordered to forfeit \$713 of pay per month for two months and serve 45 days of extra duty. Upon review the second month of forfeiture of pay as well as the 45 days of extra duty was suspended. Unfortunately in April 2006 Petitioner wrongfully withheld money belonging to another Marine for which he was tried and convicted of wrongful appropriation by special court-martial (SPCM). As a result he was reduced to private (E-1) ordered to forfeit \$849 of pay per month for three months and served 45 days of confinement.

d. Following his release from confinement Petitioner was transferred to Iraq where he served as a member of an artillery unit. He successfully completed his Iraq combat tour earning a promotion to private first class (E-2) and a meritorious promotion to lance corporal (E-3). Following his return to the United States he earned a promotion to corporal (E-4).

e. Based upon his superior performance of duty in Iraq and subsequent stateside service Petitioner requested that he be allowed to reenlist. Enclosure (2) is a letter dated 1 July 2008 from a Marine Corps first lieutenant under whom Petitioner had served in both combat and garrison duty strongly recommending that Petitioner be given an opportunity to reenlist. In August 2008 Petitioner formally requested reenlistment relying on his strong and superior performance of duty in Iraq and subsequent stateside assignment. See enclosure (3). Petitioner's battalion commander favorably endorsed his request and "recommended with confidence" that Petitioner be reenlisted for four years. See enclosure (4). Despite these favorable recommendations the regimental commander rejected Petitioner's request and Petitioner was assigned an RE-4 reenlistment code.

f. Enclosure (5) is an advisory opinion from Headquarters Marine Corps stating that based upon Petitioner's disciplinary infractions in 2006 he was correctly assigned an RE-4 reenlistment code.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the unfavorable recommendation of enclosure (5) the Board concludes that the interest of justice would be better served by changing Petitioner's RE-4 reenlistment code to the less restrictive RE-3C based on his superior performance in both Iraq and stateside following his disciplinary infractions which occurred in 2006. With an RE-3C code Petitioner can petition the Commandant of the Marine Corps for a waiver and reenlistment. However because of

Petitioner's documented disciplinary problems the Board can find no error or injustice in withholding an RE-1 reenlistment code.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that upon being discharged on 7 November 2008 he was assigned an RE-3C reenlistment code.
- b. That no further relief be granted.
- c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.
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

Review and approved:

 2/19/11
ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000



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BAN
Docket No. 11470-10
16 February 2011

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 February 2011. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, his naval record and applicable statutes, regulations and policies. The Board considered the advisory opinion furnished by Headquarters United States Marine Corps (HQMC) memo 1070 JAM3 of 24 Jan 11, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is also important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,


W. DEAN PFEIFFER
Executive Director

Enclosure