



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

SJN
Docket No: 07277-13
12 March 2014

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

Subj: REVIEW OF NAVAL RECORD ICO [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 dependent of deceased former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting a change in her late father's bad conduct discharge (BCD).

2. The Board, consisting of Messrs. Zsalman, Gattis, and Exnicios, reviewed Petitioner's allegations of error and injustice on 11 March 2014 and, pursuant to its regulations, determined that the limited 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 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 and began a period of active duty on 30 October 1947. On 5 January 1950, he was convicted by general court-martial (GCM) of 49 days of unauthorized absence (UA). He was sentenced to a reduction in paygrade, six months confinement, and a BCD. On 10 February 1950, it was recommended that he be placed in restoration

training with an initial assignment to basic training after completing two-thirds of his confinement. On 27 March 1950, he requested remission of his adjudged BCD and that he be restored to full duty. On 12 April 1950, the Commandant of the Marine Corps concurred with the recommendation of the local clemency board and it was directed that he be restored to duty. On 12 April 1950, it was further directed that the unexecuted portion of his sentence be remitted subject to six months' of probation. However, he received the BCD on 12 May 1950 after appellate review was completed.

CONCLUSION:

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

Although Petitioner was properly discharged from the Marine Corps as a result of his GCM sentence, he did request and was granted restoration to duty subject to six months of probation on 12 April 1950. However, he received his BCD on 12 May 1950.

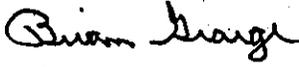
After careful and conscientious consideration of the entire record, the Board concludes that even though the BCD was proper, based on Petitioner's overall record of military service, satisfactory conduct and performance for more than two years, the Board believes that a BCD for 49 days of UA is overly harsh and not warranted, and as a matter of clemency, a general characterization of service better reflects his overall service. In view of the foregoing, the Board recommends the following partial corrective action:

RECOMMENDATION:

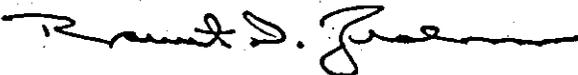
- a. That Petitioner's naval record be corrected to show that on 12 May 1950, he received a "general" discharge vice the BCD.
- b. That no further relief be granted.
- c. That a copy of this report of proceedings be filed in Petitioner's naval record.
- d. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 20 August 2013.

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 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.


ROBERT D. ZSALMAN
Acting Executive Director