



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 352-98

20 May 1999

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) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by showing he was transferred to the Fleet Marine Corps Reserve (FMCR) on 30 November 1995 as a staff sergeant/ (E-6), instead of being discharged on 9 March 1998.

2. The Board, consisting of Mr. Milner, Ms. Nofziger, and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 18 May 1999 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 reenlisted in the Marine Corps on 11 November 1990 after 15 years of prior honorable service.

d. Subsequently, Petitioner submitted a written request for transfer to the Fleet Marine Corps Reserve (FMCR) to be effective 30 November 1995. However, his request was held in abeyance pending disciplinary action.

e. On 7 October 1995 Petitioner was convicted by general court-martial (GCM) of distribution of marijuana and conspiracy. The sentence was approved by the convening authority on 10 May 1996. He was sentenced to reduction in rank to private/(E-1), confinement for six months, and a back conduct discharge. On 26 August 1996, Petitioner was placed on appellate leave pending further appellate review.

f. Subsequently, a GCM supplemental order of 9 March 1998 noted that the findings and sentence of the GCM had been set aside on 29 January 1998 by the Navy-Marine Corps Court of Criminal Appeals, and that Petitioner would be issued a general discharge.

g. Accordingly, on 9 March 1998, Petitioner was issued a general discharge.

h. An advisory opinion (AO) from Headquarters, Marine Corps (HQMC), recommends that Petitioner's record be corrected to show that he was not discharged from the Marine Corps but transferred to the FMCR. The AO notes in part, as follows:

(Member) requested a transfer to the Fleet Marine Corps Reserve (FMCR) to be effective 30 November 1995.... his transfer was held in abeyance pending the completion of disciplinary action.... he was placed in an appellate leave status while undergoing disciplinary action and ultimately a GCM.... when his GCM was completed, he had been reduced in rank to private and given a general discharge.... the GCM findings and sentence were overturned on 29 January 1998.... charges were subsequently dismissed prior to his discharge from the Marine Corps.

In consideration of the above facts, we recommend that Petitioner's records be corrected to show that he was not given a general discharge on 9 March 1998; and that he was transferred to the FMCR in the rank of staff sergeant, with no lost time, effective 30 November 1995 as he had originally requested. We further recommend that his retired pay account be established and adjusted accordingly.

CONCLUSION:

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

The Board substantially concurs with the comments contained in the advisory opinion and concludes that since the findings and

sentence of the GCM were set aside, the record should be corrected to show Petitioner transferred to the FMCR on the date originally approved by HQMC.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that he was transferred to the FMCR on 30 November 1995 in the rank of SSGT/(E-6) vice issued the general discharge actually on 9 March 1998.

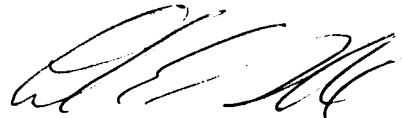
b. That Petitioner's naval record be further corrected to show no lost time from 29 September 1995 to 21 February 1996.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

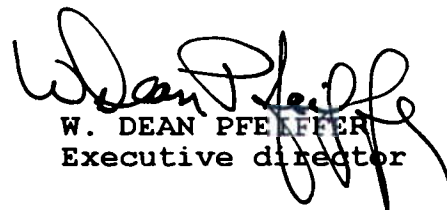
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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 (2 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