



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

TRG
Docket No: 3636-00
24 August 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps filed an application with this Board requesting that his record be corrected to show a better characterization of service than the bad conduct discharge issued on 20 June 1973.

2. The Board, consisting of Mr. Shy, Mr. Pfeiffer and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 21 August 2001 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. Although it appears that Petitioner's application 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 7 September 1965 at age 18. On 27 April 1966 he received nonjudicial punishment for an unauthorized absence of about 20 hours. He then served in Vietnam from 21 July 1966 to 15 August 1967. During this period he participated in 10 combat operations and were wounded in action. He was honorably discharged on 15 December 1967 for the purpose of immediate reenlistment.

d. Petitioner reenlisted in the Marine Corps on 16 December 1967 for six years. He then served in Vietnam from 8 January to

13 December 1969. During this period he participated in six combat operations and was awarded the combat action ribbon. He also received nonjudicial punishment for impersonating a staff noncommissioned officer. On 29 September 1970 he was convicted by a special court-martial of an unauthorized absence of about 126 days. The court sentenced him to 60 days restriction, 60 days hard labor without confinement, and a suspended reduction in rank to private. On 27 October 1970 Petitioner's request for a hardship discharge was denied.

e. Petitioner then served without incident until 6 August 1972. On that date he began a period of unauthorized absence which lasted until he was apprehended on 16 January 1973, a period of about 163 days. A special court-martial convened on 29 March 1973 and convicted him of the 163 day period of unauthorized absence. The court sentenced him to reduction to pay grade E-1, forfeiture of \$200 pay per month for four months and a bad conduct discharge. On 10 May 1973 he was diagnosed with a passive aggressive personality disorder. Six days later, he elected to waive his right to request restoration to duty. The bad conduct discharge was issued on 7 June 1973.

f. In support of his request for a better discharge, Petitioner has submitted several letters from Marines who served with him in Vietnam. One of those letters is from the former commanding officer of the First Battalion, Fifth Marines who states, in part, as follows:

... (Petitioner) was also a member of the Forward command Post element, in the S-3 section, which placed him at most times in my immediate vicinity. Throughout this period the Battalion, including the Forward Command Post element was all but continuously outside our Combat Support Base involved in operations against units of the Viet Cong and the North Vietnamese Army.

During the time in which (Petitioner) served under me he did an exemplary job as Operations Watch Stander. This involved maintaining an awareness of the entire current battalion operations; plotting such activities as night patrols; Harassing and Interdiction artillery missions, and planned air strikes; as well as staying in contact with various units by voice radio, and writing reports. He also stood perimeter security duty.

Subsequent to my retirement from the Marine Corps I obtained my Ph.D. in Psychology, was licensed, and worked for a number of years in various teaching and

psychotherapeutic positions. During this phase of my career I had the opportunity to treat a number of veterans for Post Traumatic Stress Disorder (PTSD). I am aware that this malady takes many forms. It can cause a person to react to life events in ways which are not compatible with accepted norms of behavior. I also believe that any person who has served in combat, and especially one who has been wounded -- as (Petitioner) was -- probably carries with him sufficient residue of PTSD to cause him, given sufficient contemporary stress, to behave in ways not dissimilar to the way (Petitioner) did under his particular set of psycho-social stressors.

I have become reacquainted with (Petitioner) over the past two years and am aware of how he conducts himself both privately and publicly. I believe that he is a good man, dedicated to his family and to his former comrades-in-arms. He has spent considerable personal time and money to locate and organize those persons formerly in H&S 1/5 in a veterans' community. He is also under treatment for PTSD.

I believe that he is a credit to his present, civilian community and that there were mitigating circumstances for his action when he went on Unauthorized absence in (an) attempt to bring some coherence to his family life.

I believe that in spite of apparent injustices and sinking into passive aggressive and other self destructive behavior (Petitioner) should be granted relief and that his discharge should be reviewed and upgraded to an honorable discharge. As a veteran of two tours in Vietnam he should be able to receive the benefits which have legally accrued to other veterans who fought honorably for their country and who gave less than he.

The former executive officer of First Battalion, Fifth Marines also supports recharacterization of Petitioner's discharge. He states that the battalion was almost continuously in a combat situation. He also points out that the atmosphere in the Marine Corps and society in the 1970's was not conducive to the adjustment of combat veterans.

g. The former operations officer of First Battalion, Fifth Marines states, in part, as follows:

I was a major at the time (April-November 1969)

and Operations Officer, S-3 (Petitioner) worked directly for me. I saw him every day. He was rarely more than a few feet away from me. The entire time I was with the battalion (except for a brief 4 to 5 week period) we were "in the bush" or "in contact," conducting "search and destroy" operations.

Since I was never more than a few feet away from (Petitioner), let me describe a typical day. He was at work before sunrise, usually moving. He was always hot, filthy, and tired before sunrise, and may or may not have had time to eat or shave. As he moved with the battalion he was under constant threat of booby traps and snipers, insects, and leeches. He carried a 30 to 40 pound pack everywhere he went. He wore only a pair of boots, trousers, flak jacket, helmet, and M-16, with an olive drab towel draped around his neck to constantly mop off the sweat. When there was contact with the enemy he had to view the death of his fellow Marines. He may or may not have known them, but it was not a "pretty death" like one sees in the movies. ...

The operations officer concludes, in effect, that he has been adequately punished and that an "amnesty" is now warranted in this case.

h. In support of his request, Petitioner has submitted a psychiatric evaluation. The psychiatrist diagnosed him with chronic Post-Traumatic Stress Disorder with delayed onset and concluded that he had substantial impairment.

i. The Board has received an advisory opinion on the post traumatic stress disorder issue from a Navy psychiatrist who concludes as follows:

.... In reviewing the file I am struck by the poignancy of his supporting letters, and I am again reminded of the hardships these vets faced, both in Viet Nam and at home. It is also unusual in that there are really no significant records to indicate a significant history of Post Traumatic Stress Disorder following his release from active duty, which would go against this diagnosis.

Looking back over the record as a whole, and in light of our current understanding of PTSD, I think there is good reason to suspect that the petitioner was suffering from at least some aspects of PTSD during the time of his final enlistment. I think that this likely

did contribute in a significant way to the misconduct that lead to his discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner's two tours in Vietnam, the statements concerning his combat service, his personal problems, and the psychiatric evaluation and advisory opinion. The Board concludes that he has been adequately punished for his unauthorized absence by having a bad conduct discharge for over 28 years and that recharacterization of the discharge to general is now warranted as a matter of clemency.

RECOMMENDATION:


- a. That Petitioner's naval record be corrected to show that on 20 June 1973 he was issued a general discharge by reason of misconduct vice the bad conduct discharge now of record.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed on request that his application was received by the Board on 23 May 2000.
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 (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.



For W. DEAN PFEIFFER
Executive Director