



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

TRG
Docket No: 3983-01
7 December 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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to show a better discharge than the discharge under other than honorable conditions issued on 10 April 1985. He further requests that he be promoted to LCPL (E-3).

2. The Board, consisting of Mr. Pfeiffer, Mr. Dunn and Mr. Milner, reviewed Petitioner's allegations of error and injustice on 4 December 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 Reserve on 11 April 1979 at age 17. He then served in an satisfactory manner and fulfilled his drilling and training duty obligation through the anniversary year ending on 10 April 1981. In the next anniversary year, he only attended 26 drills and did not perform annual training. During the period April through June 1982 he missed 10 additional drills and was processed for an administrative discharge.

d. An administrative discharge board (ADB) met on 6 October 1982. Petitioner testified that he could not drill on weekends because of a conflict with his civilian job, but that he could only drill on an alternate schedule during the week. The ADB found that he had missed 18 drills prior to April 1982 and 10 drills since then, but noted that there could be extenuating circumstances in his case. It was recommended that he be transferred to the Individual Ready Reserve (IRR) with a recommendation for discharge under other than honorable conditions. Subsequently, the commanding officer noted the problems with Petitioner's civilian employment and recommended transfer to the IRR. On 9 November 1982 the Commanding General directed transfer to the IRR by reason of misconduct based upon an established pattern of shirking, with a tentative discharge under conditions other than honorable.

e. On 14 November 1982, Petitioner was transferred to the IRR. The record entry states that "upon expiration of enlistment contract to be discharged with a characterization of service under conditions other than honorable." Petitioner remained in the IRR until he was discharged under other than honorable conditions on 10 April 1985, which was the expiration of his enlistment.

f. Petitioner states in his application that he was hired by the Orleans Levee District Police in 1982. Subsequently, he was required to attend a three months period of training at the police academy, and for several months thereafter he was scheduled for duty on the weekends and his employer would not allow him time off to attend drills. He desires a change in his record so that he can reenlist.

g. There is no evidence in the record showing that Petitioner was ever promoted to LCPL as he contends.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes the finding of the ADB which indicates that there were mitigating factors in this case, which certainly supports his contention that he missed drills because of a job conflict. However, it appears that he did not take adequate steps to ensure that his reserve unit knew his situation while he was in the police academy, and to resolve the conflicts with his work schedule. The Board believes that, in order for the discharge to be valid, he should have been discharged on 14 November 1982 the date he was transferred to the IRR instead of being retained until the expiration of his enlistment. However,

the Board believes that since he served until the expiration of his enlistment, discharge under other than honorable conditions was inappropriate. Since the record shows missed drills, the Board concludes that an honorable discharge is not warranted and the record should be corrected to show that on 10 April 1985 he was issued a general discharge, vice the discharge under other than honorable conditions now of record.

The Board notes that there is no evidence in the record to show that he was ever promoted to LCPL and believes that his inability to attend drills would have provided a sufficient basis to deny such a promotion. Therefore, his request for promotion to LCPL is denied.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that 10 April 1985 he was issued a general discharge, vice the discharge under other than honorable conditions now of record.

b. That Petitioner's request for promotion to LCPL be denied.

c. That 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



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.



W. DEAN PFEIFFER
Executive Director