



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

TRG
Docket No: 4582-00
26 July 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) CO MALS 42 ltr 1900 S-1 of 7 Dec 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he was not discharged under other than honorable conditions on 7 November 1999 but continued to serve in the Marine Corps Reserve.

2. The Board, consisting of Mr. Cooper, Mr. Lightle and Mr. McPartlin, reviewed Petitioner's allegations of error and injustice on 17 July 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps Reserve on 10 July 1997 at age 17. The record shows that he satisfactorily completed initial training and served in an excellent manner for over two years. In 1999 he was charged with missing reserve drills and on 7 November 1999 was discharged under other than honorable conditions by reason of unsatisfactory participation in the Marine Corps Reserve.

d. At enclosure (2) is a letter from the Commanding Officer Marine Aviation Logistic Squadron 42 which states, in part, as

follows:

... Research at this command has determined that (Petitioner) was not an unsatisfactory participant and should not have been discharged.

... The below information was revealed:

a. During the period of (Petitioner's) alleged unauthorized absences, MALS-42 was participating in two drill weekends per month. The Aviation Supply section would drill on the first weekend with the other MAG-42 units, and the remainder of the unit would drill on the third weekend of the month.

a. (Sic) (Petitioner was assigned a platoon code of "MANT" upon reporting to this command. The Maintenance Section would always drill on the third weekend of the month.

b. (Petitioner) was actually working in the Aviation Supply section, which had platoon codes of "ASUP" and "BSUP." The ASUP platoon code would drill on the first weekend of the month; the BSUP platoon code would drill on the third weekend of the month. (Petitioner) was drilling on the first weekend.

c. In spite of the fact that (Petitioner) was reporting for drill on the first weekend, the muster sheets for the first weekend were never annotated to show his reporting. On the third weekend, the muster sheet always reflected (Petitioner) as "UA", because no one in the Maintenance section knew who he was.

d. (Petitioner) did not question the fact that he was not getting paid for drills because he knew he had indebtedness to the Government, and he thought he was paying the indebtedness back.

e. When (Petitioner) received the initial notification of the recommendation for discharge due to unsatisfactory participation, his Officer-in-Charge, and the Sergeant who prepares the muster sheets brought documentation to try to correct the situation. However, the documentation did not include muster sheets, as (Petitioner) had not been annotated on the musters. This documentation included class rosters, where the Marines wrote their names individually.

f. The administrative and accountability problems

on the muster sheets have been rectified.

... (Petitioner) was the victim of extreme administrative and accountability oversight and should not be penalized. (Petitioner) wants to continue his Marine Corps Reserve affiliation, and is highly recommended for retention.

e. Documentation has been submitted showing that Petitioner has been erroneously charged with missing drills and should be credited with two paid drills each day on 6/7 December 1997, 20/21 February 1999, and 5/6 June 1999. It is unclear from the record whether or not he was paid for drills he attended after June 1999 until his discharge on 7 November 1999. A gunnery sergeant has attested to the fact that despite his discharge, he attended drills from December 1999 through March 2000.

f. Petitioner states in his application that he desires to be a member of the Marine Corps Reserve. He notes that the educational assistance he was receiving will be stopped because of the improper 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 the commanding officer's letter and concludes that the record should be corrected to show that he was not discharged under other than honorable conditions on 7 November 1999 but continued to serve in the Marine Corps Reserve.

Given the circumstances, and as recommended by the command, Petitioner should be paid for the drills in December 1997 and in February and June 1999. In addition, his pay account should be audited and he should be paid for any other drills in 1999 that he attended but for which he has not been paid. Since the discharge was erroneous, the Board further concludes that he should be credited with four pay drills each month beginning in December 1999 and continuing through August 2001. This later month was chosen in order to allow for the time necessary to process this action of the Board. If he does not want to continue in a drilling status after being advised of this action, he should be transferred to the Individual Ready Reserve (IRR) on 1 September 2001 with a recommendation for reenlistment. Finally, Petitioner should be paid any educational assistance he was deprived of due to the erroneous discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he

was not discharged on 7 November 1999 but continued to be a member of the Marine Corps Reserve;

b. That Petitioner be further corrected to show that he was credited with four pay drills in December 1997 and February and June 1999 and in any other months in 1999 that he attended drills;

c. That Petitioner's naval record be corrected to show that he attended four paid drills a month beginning in December 1999 and continuing through August 2001;

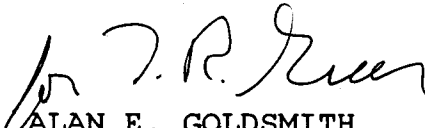
d. That he be paid any educational assistance to which he is entitled;

e. 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; and

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with 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 (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