



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

TRG  
Docket No: 5431-01  
24 October 2002

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps Reserve filed an application with this Board requesting that his record be corrected, in effect, to show that he was not discharged on 19 June 1996 but continued to serve until the expiration of his enlistment, and was assigned an RE-R1 reenlistment code at that time. He is also requesting corrections to show the award of decorations he would have received but for his improper discharge, and waiver of the recoupment that was directed for the cost of gear he lost.

2. The Board, consisting of Mr. McBride, Mr. McPartlin and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 8 October 2002 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 29 July 1991 at age 20. On 19 August 1991 he began his initial period of active duty for training and remained in that status until his release on 22 April 1992. He then served in an excellent manner as a drilling reservist until 1995. This included almost three months of active duty in support of

recruiting efforts. On 1 April 1995 he was promoted to corporal (CPL; E-4).

d. Subsequently, Petitioner began to miss drills and was absent from the two weeks of annual training (AT) in 1995. Consequently, he was processed for discharge due to unsatisfactory participation in the Marine Corps Reserve. In his letter recommended discharge, the commanding officer stated, in part, as follows:

.... Attempts were made to contact (Petitioner) at his home, however contact was unable to be made. Messages were left with his brother on several occasions to contact the Reserve Center, to this day no attempt has been made by phone. .... (His parents said) .... that their son has gotten himself up to his neck in school and work as well as trying to deal with the two hurricanes that passed thru where he lived. They asked the First Sergeant if the Marine Corps could give their son a little time to get his act together and that they would try to convince him to return to a good drill status. The I-I (Inspector-Instructor) and First Sergeant agreed to give him 2 weeks to at least call the Reserve Center to discuss his drill status. To this date he has not called the Reserve Center to discuss his drill status, however, he has sent us a number of fax's with no return phone number. This sort of one way conversation is not going to help this Marine return to a satisfactory drill status. (The letter of notification) was hand delivered by MGYSGT (B), he was told by (Petitioner's) landlord that (he) had to break his lease for military reasons and no longer liver there. (Petitioner) left no forwarding address, his (letter of notification) was returned unsigned, therefore (Petitioner) has waived his rights.  
.....

On 28 May 1996, the discharge authority directed discharge under other than honorable conditions and Petitioner was so discharged on 19 June 1996. In connection with discharge, he was reduced to lance corporal (LCPL; E-3) and was assigned an RE-4 reenlistment code.

e. At about the time discharge processing was begun, Petitioner requested congressional assistance stating, in part, as follows:

.... I am a full time student at the Saint Leo College in Fort Walton Beach, Florida (about 150 miles from (the reserve center)). The large commuting distance,

my full time student status and hardships brought on by Hurricanes Erin and Opal have precluded my regular attendance at reserve drill meetings and training events. I do not own a vehicle and due to hurricane damage have no fixed address.

Despite my repeated requests to be excused from Reserve activities and be transferred to the Inactive Ready Reserve (IRR) based upon my hardship situation and in accordance with Marine Corps regulations, I was shocked to learn that my unit is planning to vacate my noncommissioned officer status (i.e. demote me) and ultimately discharge me from the Marine Corps. Sir, I am asking your help in being placed in the IRR until I can get through my extreme hardships and complete my degree. ....

f. In its response to the congressman, the unit stated that Petitioner had requested transfer to the IRR on two occasions, but did so by fax rather than in person or over the phone and was in an unsatisfactory status at the time. The unit also provided a chronology of events and actions taken in Petitioner's case. The command input concludes, in part, as follows:

.... prior to missing AT this past summer, (he) has been an exemplary Marine, he was helping out the Marine Recruiters in Fort Walton Beach and has received a NAM for his referral efforts. .... (His) problems started when he scheduled classes for the same period as AT this past summer. I believe he felt that we had screwed him by not excusing him from AT, once he didn't get his way he didn't want anything to do with us. I think this is verified by the fact that he has not called to talk to us on the phone. By relying on faxes he thinks he has proof of one way conversations in which he directs us to do things, once directed, he believes we will do as he wishes. .... If he can make the effort to research orders and directives, type them on a computer and Fax them to us, why can't he make the same effort to pick up the phone and call his platoon sergeant or the I-I staff? ....

g. Petitioner applied to the Naval Discharge Review Board (NDRB) on 25 September 1999, stating that he lived over 100 miles from the reserve drill site; and that Hurricanes Opal and Erin struck his residence, destroying his only means of transportation and blocking physical access to the drill site. He pointed out that he went to the recruiting office and faxed notices to his reserve unit advising them of the hurricanes and the reasons why he could not attend drills. Additionally, he said that due to

the hurricanes his gear was lost as was his vehicle and most of his personal possessions. Given the commuting distances and the fact that he was attending school, he believes that he was entitled to transfer to the IRR. In its decision, the NDRB essentially found that Petitioner should have been transferred to the IRR. After reviewing Petitioner's service record, the substantial documentation of his accomplishments and conduct and the testimony of the applicant and witnesses, the NDRB voted to recharacterize Petitioner's discharge to honorable and change the reason for discharge to "Secretarial Authority". A copy of the NDRB decisional document is attached to enclosure (1).

h. In his application, Petitioner is essentially raising the same issues considered by the NDRB. He contends that since NDRB found his discharge to be improper, the discharge should be cancelled and the record should show that he was retained in the Marine Corps Reserve until the expiration of his enlistment in a grade comparable to that of his peers, and was then discharged with an RE-1A reenlistment code. He further requests removal from the record of all documentation concerning his improper discharge, and the award of all decorations he would have received but for the improper discharge. Finally, he requests, a correction to show that recoupment of the cost of the lost gear was waived. In support of this request, he has submitted a fax to his reserve unit, dated 4 December 1997, in which he states that gear valued at \$666.86 had been lost when hurricane Erin severely damaged his residence, and he should not be held financially responsible for the loss. There is no command determination on the form as to Petitioner's culpability or negligence in this matter. Further, he has not submitted any evidence showing that the government is actually trying to recoup that amount.

i. Secretary of the Navy Instruction (SECNAVINST) 7220.38 allows for the remission of an indebtedness that remains unpaid before, or at the time of, an enlisted member's honorable discharge. There must be a report of investigation properly endorsed by the commanding officer and approval by the Secretary of the Navy or his designee prior to discharge.

j. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps (HQMC) that recommends denial of Petitioner's requests for a change in his reenlistment code, retroactive promotion, date of discharge, and the award of decorations. However, since he was only reduced to LCPL because of the characterization of his service as under other than honorable conditions, the opinion recommends that he be restored to the grade of CPL.

k. The service record is unavailable and the review was

conducted using the NDRB decisional document, Petitioner's application and the advisory opinion from HQMC.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning his request that the discharge be cancelled and the record be corrected to show service until the expiration of his enlistment, the Board believes that he was not without fault in this matter. In this regard, he should have contacted or appeared at the reserve center in sufficient time to have his request for transfer to the IRR properly considered. The Board agrees with the command that submitting faxes was not sufficient. Therefore, the Board concludes that the record should continue to show that he was honorably discharged on 19 June 1996 by reason of Secretarial Authority and his request for service after that date should be denied. Since the record will then show no further service after 19 June 1996 there is no basis for awards or decorations after that date.

The Board agrees with the recommendation contained in the advisory opinion and concludes that Petitioner should be reinstated to the grade of CPL. Additionally, given Petitioner's period of good service, the circumstances of the case, and the findings of the NDRB that the discharge was improper, the Board believes that no useful purpose is served by the RE-4 reenlistment code and concludes that it should now be changed to RE-1A.

Finally, the Board believes that his military gear was destroyed in the hurricane and he should not be required to reimburse the government for the cost of that gear. The action to remit the indebtedness in the amount of \$666.86 can be accomplished by showing that a request for remission of indebtedness was granted by the Secretary of the Navy under the provisions of Title 10 U.S.C. 6161 and SECNAVINST 7220.38 on 19 June 1996, the date of his discharge.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the actions taken in this case.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was not reduced in grade in connection with his discharge but was discharged in the grade of CPL.
- b. That Petitioner's naval record be further corrected to show

that on 19 June 1996 he was recommended for reenlistment and/or assigned an RE-1A reenlistment code.

c. That Petitioner's record be further corrected to show that a request for remission of his indebtedness in the amount of \$666.86 under the provisions of SECNAVINST 7220.38E was approved by the Secretary of the Navy on 19 June 1996, the day of his discharge.

d. That no further relief be granted.

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

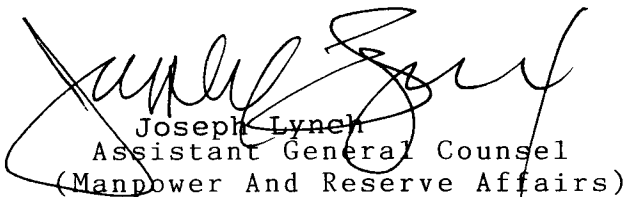
5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:

NOV. 22 2002



Joseph Lynch  
Assistant General Counsel  
(Manpower And Reserve Affairs)