



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

TJR:jdh
Docket No: 9221-02
9 September 2003

[REDACTED]

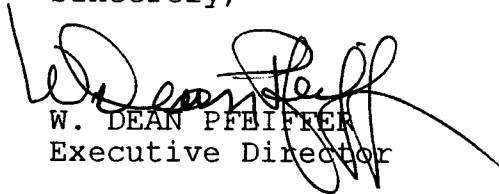
[REDACTED]

A three-member panel of the Board, sitting in executive session considered your application and a majority recommended that your naval record be corrected as set forth in the attached report dated 28 August 2003. In accordance with current regulations, the designated representative of the Assistant Secretary of the Navy for Manpower and Reserve Affairs conducted an independent review of the Board's proceedings and approved the minority recommendation that your application be denied.

You are advised that reconsideration of your case will be granted only upon the presentation of new and material evidence not previously considered by the Board and then, only upon the recommendation of the Board and approval by the Assistant Secretary.

It is regretted that a more favorable reply cannot be made.

Sincerely,


W. DEAN PFEIFFER
Executive Director



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TJR
Docket No: 9221-02
28 August 2003

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

Subj: REVIEW OF NAVAL OF RECORD [REDACTED]

Ref: (a) 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 Marine Corps, filed an application with this Board requesting that the characterization of his discharge be changed.
2. The Board, consisting of Messrs. [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 26 August 2003 and, pursuant to its regulations, a majority 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitation and review the application on its merits.
 - c. Petitioner enlisted in the Marine Corps on 22 March 1968 at age 17. At that time, he had completed 10 years of education and attained test scores which placed him in Mental Group IV.
 - d. Petitioner then served for about a year without incident, but on 28 March 1969 he submitted a written statement in which he admitted to receiving two pills of secobarbital sodium from

another Marine. However, Petitioner also said that he did not use the pills, and that he had never been under the influence of any dangerous drugs.

e. In August 1969 administrative separation action was initiated by reason of unfitness due to drug possession as evidenced by his 28 March 1969 statement. However, an administrative discharge board recommended retention. Subsequently, Petitioner was retained in a probationary status, with a proviso that he refrain from any further drug related activities.

f. During the period from 20 November 1969 to 24 April 1970, Petitioner received nonjudicial punishment (NJP) on two occasions and he was also convicted by summary court-martial (SCM). His offenses were three periods of unauthorized absence (UA) totalling 11 days, absence from his appointed place of duty, and failure to obey a lawful order.

g. Petitioner reported for duty in Vietnam on 26 July 1970. Subsequently, he was awarded the Vietnam Service Medal with one star and the Vietnam Campaign Medal. On 1 October 1970 he was promoted to lance corporal (LCPL/(E-3)).

h. On 19 January 1971, while serving in Vietnam, Petitioner submitted a written request for an undesirable discharge for the good of the service to avoid trial by court-martial for a six day period of UA, and disobeying a lawful order by refusing to get his gear and go to the field. Prior to submitting this request, he conferred with a qualified military lawyer, was advised of his rights, and warned of the probable adverse consequences of accepting such a discharge.

i. Petitioner's request for discharge was granted on 4 February 1971 and he left Vietnam two weeks later. On 24 February 1971 Petitioner received an undesirable discharge for the good of the service. As a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

j. In his application, Petitioner says he was "a faithful Marine, a hard charger even in combat," and further contends that his discharge was tainted by racial prejudice. However, he has provided the Board with no evidence to support the contention of bias, and the record contains no such evidence. Petitioner has submitted evidence that through his church, he has been involved in counseling, drug testing, and teaching. The Federal Bureau of Investigation has reported that Petitioner has no criminal record with that agency.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Messrs. Neuschafer and McPartlin, concludes that Petitioner's request warrants favorable action.

The majority's finding is based on Petitioner's youth and immaturity, limited education, low test scores, promotion to LCPL, service in Vietnam, good post service conduct, and the minor nature of his misconduct. In this regard, the majority does not condone Petitioner's misconduct, but notes that he was retained after a relatively minor incident of drug possession. Subsequent, infractions which resulted in a conviction by SCM and two NJP's included short periods of UA and failure to obey a lawful order, all of which were relatively minor. One of the offenses for which he requested discharge was another brief period of UA. The other offense, in which he disobeyed an order to go to the field in a combat zone, was more serious, but the majority weighed this offense against his otherwise unblemished service in Vietnam, during which he was promoted. Accordingly, given his good post service adjustment, and since he has suffered the consequences of an undesirable discharge for more than 30 years, the majority concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under other than honorable conditions, and relief in the form of recharacterization to a general discharge is appropriate.

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

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 24 February 1971 vice the undesirable discharge actually issued on that same day.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 23 October 2002.

MINORITY CONCLUSION:

~~_____~~ disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member is aware of the favorable aspects of Petitioner's service and the matters in extenuation and mitigation cited by the majority. However, the minority also notes Petitioner's repetitive misconduct, which continued even after he was given a second chance when his discharge was suspended for a year. Further, the minority member notes that although Petitioner's request for discharge resulted, in part, from a relatively brief period of UA, the other offense, disobeying an order to get his gear and go to the field, was very serious since it occurred in a combat zone.

The minority member also believes that considerable clemency was extended to Petitioner when his request for discharge was approved since, by this action, he escaped the potential penalties of confinement at hard labor and a punitive discharge, both of which could have been imposed if he had been convicted by court-martial. The minority member also points out that Petitioner received the benefit of his bargain with the Marine Corps when his request for discharge was granted, and he should not be permitted to change it now.

In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

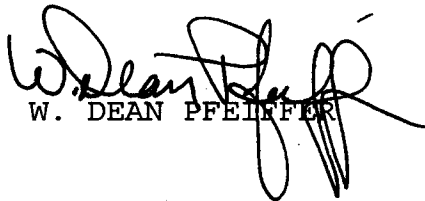
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

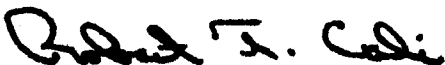
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

~~MAJORITY REPORT APPROVED:~~

MINORITY REPORT APPROVED:



9-8-03

ROBERT T. CALI
Assistant General Counsel
(Manpower and Reserve Affairs)