



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

TRG
Docket No: 4448-02
3 December 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
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member in the Marine Corps Reserve, filed an application with this Board requesting that his record be corrected to show that he was not administratively discharged on 20 March 2000 but continued to serve until the expiration of his enlistment in the grade of sergeant (SGT; E-5).

2. The Board, consisting of Mr. Beckett, Mr. Leeman and Ms. Suiter, reviewed Petitioner's allegations of error and injustice on 26 November 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. Petitioner's application was filed in a timely manner.

c. Petitioner was honorably discharged from the Marine Corps on 31 October 1998 after almost eight years of active duty. He enlisted in the Marine Corps Reserve on 30 March 1999 for two years. On 20 March 2000 he was discharged under other than honorable conditions for failure to participate in the reserve program and was not recommended for reenlistment. In connection with the discharge, he was reduced in grade to from SGT to lance corporal (LCPL; E-3).

d. Petitioner states that because of financial pressures he had to take a part time job that conflicted with his drill weekends. Since he had almost eight years of active duty, he had

no reserve obligation and was not obligated to drill. He states that he thought he had been transferred to the Individual Ready Reserve (IRR) and was not informed of any checkout process.

e. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps which states that a nonmandatory participant cannot be retained in the Selected Marine Corps Reserve solely for the purpose of administrative discharge processing if the member requests a transfer to the IRR. Further, since Petitioner contended that he was not properly notified of the discharge processing, the command was contacted and was unable to verify that he was properly notified. Given the circumstances, the advisory opinion recommends that the discharge be cancelled and that the record shows that he served until the expiration of his enlistment on 29 March 2001 when he was honorably discharged in the grade of SGT.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner had almost eight years of active duty and had no further military obligation. In cases such as this, the Board believes that the proper procedure is to transfer the member to the IRR. Given the circumstances, the Board agrees with the recommendation contained in the advisory opinion.

Therefore, Petitioner's record should be corrected to show that he was not discharged on 20 March 2000 but transferred to the IRR and continued to serve in the grade of SGT until he was honorably discharged on 29 March 2001 with a recommendation for reenlistment. Since the discharge was improper, the Board further concludes that all documentation concerning the discharge processing should be removed from his record.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was not discharged on 20 March 2000 but continued to serve in the IRR in the grade of SGT until he was honorably discharged at the expiration of his enlistment on 29 March 2001 with a recommendation for reenlistment.
- b. That the administrative discharge documentation be removed from Petitioner's record.
- c. 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.

d. 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.

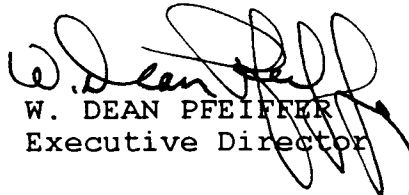
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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.



W. DEAN PFEIFFER
Executive Director