



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

ELP
Docket No. 7275-01
11 February 2002

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 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, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 1 November 1948.

2. The Board, consisting of Messrs. Leeman, Rothlein, and Ivins reviewed Petitioner's allegations of error and injustice on 6 February 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 to the Board 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 on 2 November 1945 for three years at age 17. At the time of his enlistment, he had completed 10 years of formal education.

d. Petitioner was advanced to PFC (E-2) and served for 14 months without incident. However, during the seven month period from January to July 1947 he received three nonjudicial punishments (NJP). Two of the NJPs were for violation of general orders, an unspecified absence over leave, and negligence in the performance of his duties. The facts and circumstances of the third NJP are not shown in the record.

e. During the four month period from March to June 1948, Petitioner was convicted by two summary courts-martial. The first was for a one day period of unauthorized absence and the second was for sleeping on watch. Thereafter, Petitioner served without further incident and received a general discharge upon the expiration of his enlistment on 1 November 1948. His conduct and proficiency averages at the time of discharge were 4.87 and 4.31, respectively.

f. Characterization of service is determined in part, by conduct and proficiency averages computed from marks assigned during periodic evaluations. Petitioner's averages normally would have qualified him for a fully honorable characterization of service. However, regulations in effect at the time of Petitioner's service, prohibited the issuance of an honorable discharge to individuals convicted by a general court-martial or more than one summary courts-martial.

g. Petitioner states that the lieutenant who preferred the charges for both summary courts-martial did not like him for some reason. Concerning the charges of the first summary court-martial, he claims that he was 24 hours late in returning from leave because his flight was delayed due to a snowstorm. The second court-martial was for sitting down and sleeping on guard duty. He now admits that he was sitting down, but asserts that he was not sleeping. Petitioner provides letters of reference attesting to his good character and achievements subsequent to discharge, and documents showing that he retired after 30 years of Federal service as a GS-13.

h. A report from the Federal Bureau of Investigation obtained by the Board shows no convictions.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, it appears that the offenses for which he received the three NJPs and two summary courts-martial were relatively minor in nature. Additionally, there is no longer a prohibition against an honorable discharge for an individual with two convictions by summary court-martial. Absent Petitioner's two courts-martial, his conduct and proficiency averages were sufficient to warrant a fully honorable characterization of service. The Board believes his post-service conduct and achievements far outweigh his misconduct in the Marine Corps, and it is unjust to continue to stigmatize his service as only under honorable conditions. Accordingly, the Board concludes that his general discharge should be recharacterized to fully honorable.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that he was honorably discharged on 1 November 1948 by reason of expiration of enlistment, vice the general discharge actually issued on that date.

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

c. That upon request, the Department of Veterans Affairs be informed the Petitioner's application was received by the Board on 19 September 2001.

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.

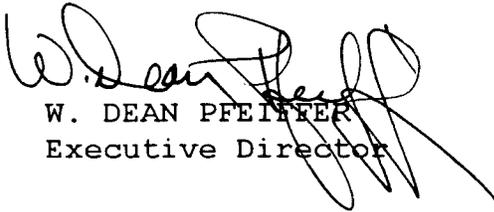
ROBERT D. ZSALMAN
Recorder



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