



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

CRS
Docket No: 2020-03
9 September 2003

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, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by changing the RE-4 reenlistment code assigned on 17 March 1999.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 August 2003 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 enclosure (1) was not filed in 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 26 May 1998. On 18 September 1998, he received nonjudicial punishment (NJP) for a four day period of unauthorized absence.

d. On 1 March 1999 the commanding officer directed that Petitioner be separated with a general discharge by reason of fraudulent enlistment for concealment of a preservice medical condition on his Statement of Medical History (SF 93).

Specifically, he knowingly concealed a torn cruciate ligament and hemarthrosis. On 17 March 1999 he was separated with a general discharge by reason of misconduct due to fraudulent enlistment. At that time, he was assigned a reenlistment code of RE-4.

e. The Marine Corps Separation and Retirement Manual, section 6204, states that the SF 93 shall not be used as a basis for processing a recruit for discharge due to fraudulent enlistment. However, an individual may be separated due to erroneous enlistment if the enlistment would not have occurred if the relevant facts had been known, but there was no fraudulent conduct on the individual's part. Applicable directives authorize the assignment of either an RE-3E or RE-4 reenlistment code to an individual separated for erroneous enlistment.

f. Headquarters Marine Corps has submitted an advisory opinion to the effect that based on Petitioner's overall record, the RE-4 reenlistment code was correctly assigned.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board notes that Petitioner was incorrectly processed for fraudulent enlistment based on the SF 93, rather than for erroneous enlistment. Therefore, the Board concludes that erroneous enlistment should be the reason for discharge. Accordingly, the Board recommends that Petitioner's reason for separation be changed to erroneous enlistment vice fraudulent enlistment.

Although Petitioner has requested that his reenlistment code be changed, the Board notes that the RE-4 reenlistment code is authorized by regulatory guidance for individuals discharged due to erroneous enlistment. Further, the Board believes this code was appropriately assigned to Petitioner since he received NJP, and intentionally failed to reveal on his SF 93 that he had a pre-service medical condition.

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

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he received a general discharge by reason of erroneous enlistment on 17 March 1999.
- b. That no further relief be granted.
- 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.

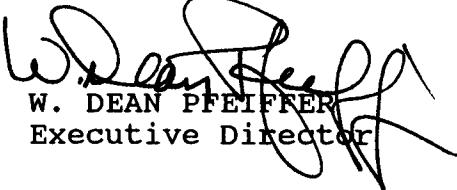
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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