



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

SJN
Docket No: 08335-06
4 April 2007

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

Subj: REVIEW OF NAVAL RECORD OF EX- [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with 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 recharacterization of his release from active duty.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 August 2005 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 enclosure (1) 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 8 July 1999 at age 18. On 24 May 2000 and 18 January 2001 he received nonjudicial punishment (NJP) for two periods of unauthorized absence (UA) totaling 105 days. The cumulative punishment awarded at these NJP's included reductions in rank from lance corporal (LCpl; E-3) to private (Pvt; E-1).

d. After his second NJP, Petitioner remained on active duty for about 33 months. During this period, he advanced in rank to CPL . His record during the last 26 months of service reflects exemplary conduct and excellent performance. Also, he was deployed to Iraq and earned the Combat Action Ribbon.

e. On 22 October 2003 Petitioner was released from active duty under honorable conditions at the expiration of his enlistment and transferred to the Marine Reserve. Petitioner's military obligation expires on 20 July 2007.

f. Petitioner's release was characterized as under honorable conditions and not fully honorable based on conduct and proficiency averages computed from marks assigned on a periodic basis. His conduct average was 3.8. A conduct average of 4.0 is required for a fully honorable characterization of service.

g. In his application, Petitioner points out that he completed his enlistment but with a characterization of under honorable conditions, he is unable to use his benefits under the Montgomery GI Bill (MGIB). He believes that his good conduct since the second NJP, and his combat service warrant an honorable characterization of service.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

Although Petitioner's record of military service includes NJP's for periods of UA totaling more than three months and characterization of his service as under honorable conditions, was technically proper given his failure to attain the required average in conduct, the Board believes that his excellent record of service after the second NJP earned him a better characterization of service. During this period, he had no disciplinary infraction, was advanced in rank to Cpl, performed his duties, and an excellent manner, and served overseas in combat. In view of the foregoing, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 22 October 2003 Petitioner was honorably released from active duty, vice the release under honorable conditions actually issued on that date. Upon completion of his military obligation, an honorable discharge should be issued.

b. That a copy of this report of proceedings be filed in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 15 September 2006.


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 Regulation, 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