



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

TAL
Docket No: 2964-09
12 February 2010

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 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) with this Board requesting that he be issued a Certificate of Discharge or Release from Active Duty (DD Form 214) with a general characterization of service.

2. The Board consisting of Messrs [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 January 2010 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 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 7 April 1966 at the age of 18. During the period from 13 October 1967 to 14 October 1968 he was the subject of nonjudicial punishment on two occasions for failure to obey a lawful order, two specifications of disobedience, and a 21 day period of unauthorized absence (UA). He was also convicted by summary court-martial of a 27 day period of UA. On 29 May 1969 he was convicted by special court-martial (SPCM) for a 79 day period of UA and as a result he was

sentenced to a bad conduct discharge. However, the sentence was subsequently overturned by the convening authority. On 10 July 1969 his counsel submitted an addendum in which it was noted that based on the overall record of average proficiency and conduct marks of 4.1 and 2.9, respectively, and his awards, to include the Purple Heart Medal, he should have been retained in the Marine Corps so that he could earn an honorable characterization of service. On 22 July 1969 he began another period of UA. The record does not reflect that he returned to military custody and on 23 August 1969 he was declared a deserter. For record purposes, this action served as the termination of his period of UA and enlistment.

d. A DD Form 214 was never issued for his period of service. On 27 March 2008 the Marine Corps noted that Petitioner had not been notified or that there were no records of attempts to notify him of discharge or the characterization of his service. At that time it was also noted that his average proficiency and conducts marks were 4.1 and 2.9, respectively, and would be sufficient for a general under honorable conditions characterization of service.

e. On 23 April 2008, in an advisory opinion from the Marine Corps, it was recommended that due to the conflicting information in the record, that Petitioner's characterization of service and date of discharge be determined by the Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board's decision is based on his overall record which includes his proficiency and conduct averages, award of the Purple Heart Medal, four disciplinary incidents for failure to obey orders, disobedience, and three lengthy periods of UA totalling approximately 127 days. The Board also notes that his last period of UA was terminated for record purposes only because there was no record of his return to military custody.

Based on the foregoing, and considering the fact that Petitioner suffered the consequences of not having a DD Form 214 for more than 40 years, the Board concludes that no useful purpose is served by continuing to not characterize his service. As such, the Board concludes that he should be issued a DD Form 214 with the characterization of general under honorable conditions.

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

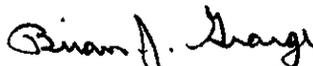
he was issued a DD Form 214 and a general discharge on 23 August 1999.

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

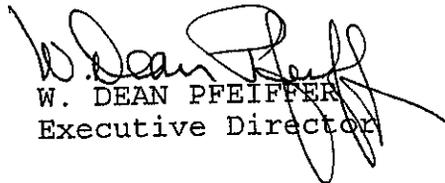
c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 23 March 2009.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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


BRIAN J. GEORGE
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