



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

TAL
Docket No: 10513-09
1 March 2010

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

Subj: REVIEW 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 his narrative reason for separation (misconduct without administrative discharge board-Fraudulent Enlistment-failure of a Marine to reveal pre-service involvement with civil authorities), separation designator (SPD) code (JKG3), and reenlistment code (RE-3F) be changed.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 February 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 Corp on 18 July 1980 at the age of 19 and began period of active duty on 28 July 1980. On 30 July 1980 he completed enlistment documentation which

stated, in part, that he was advised by a recruiter that his pre-service civil misconduct "did not matter" because he had paid the fines. However, on 20 August 1980, a statewide investigation revealed that he had three civil charges pending. As a result of this action, on 18 September 1980, he was honorably discharged from the Marine Corps due to misconduct by reason of fraudulent enlistment due to failure to reveal pre-service involvement with civil authorities.

d. In December 1980 an investigation conducted by the Recruiting Station Minneapolis, Minnesota revealed that Petitioner was counseled by his recruiter to conceal his police record, specifically, by omitting the information regarding his civil offenses/charges from the Record of Military Processing DD Form 1966. On 8 January 1981 the discharge authority recommended that his discharge be declared erroneous vice fraudulent due to recruiter malpractice.

e. In an advisory opinion from Headquarters Marine Corps (MMSR-3) dated 8 December 2009; it is recommended that Petitioner's record be corrected to show a SPD code of JFC3, a narrative reason for separation (Erroneous Enlistment, Pre-service Juvenile Record).

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, in part, on the advisory opinion recommendation which recommends that Petitioner's record be corrected to show a SPD code of JFC3, and a narrative reason for separation of Erroneous Enlistment, Pre-service Juvenile Record. In this regard, the Board substantially concurs with the comments contained therein.

Further, the Board concludes that Petitioner's narrative reason for separation, separation designator code, and reenlistment code appear to be exceptionally harsh and a change of this data to be less stigmatizing is now warranted. As such, the Board concludes that the narrative reason for separation should be changed to Erroneous Enlistment, Pre-service Juvenile Record, the separation designator code changed to JFC3, and the reenlistment code changed to RE-3C.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 18 September 1980 he was honorably discharged by reason of Erroneous Enlistment, Pre-service Juvenile Record, and assigned a

separation designator code of JFC3 and a reenlistment code to RE-3C vice being separated by reason of misconduct without administrative discharge board - Fraudulent Enlistment - failure of a Marine to reveal pre-service involvement with civil authorities and assigned a JKG3 separation designator code and an RE-3F reenlistment code.

b. 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.


c. 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. 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