



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

JRE
Docket No. 13222-09
16 February 2010

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged by reason of physical disability vice misconduct.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 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. Petitioner enlisted in the Marine Corps on 9 February 1988. He received nonjudicial punishment on 14 October 1988 for being absent from formation, and for dereliction of duty for being unshaved and wearing a dirty uniform. On 14 November 1988, he received nonjudicial punishment for failing to go to restricted muster on two occasions. Although he had been given diagnoses of a personality disorder and alcohol abuse and

recommended for administrative separation by reason of unsuitability, he was discharged by reason of misconduct (pattern of misconduct) on 9 March 1989, with a discharge under other than honorable conditions.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner failed to submit sufficient evidence to demonstrate that he was unfit for duty by reason of physical disability at the time of his discharge. In this regard, it notes that neither alcohol abuse nor personality disorders are considered disabilities under the laws administered by the military departments. In addition, the Board notes that as a discharge by reason of misconduct takes precedence over disability evaluation processing, Petitioner would not have been entitled to disability separation or retirement even if he had been unfit for duty by reason of physical disability.

Notwithstanding the foregoing, the Board concludes that the characterization of Petitioner's service as under other than honorable conditions, although proper, is unduly harsh. Accordingly, 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 on 9 March 1989, he was discharged by reason of misconduct with a general discharge.

b. That no further relief be granted.

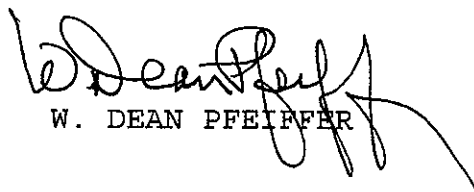
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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


JAMES R. EXNICIOS
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