



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

RDZ:ecb  
Docket No. 07509-12  
25 September 2012

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

Encl: (1) DD Form 149  
(2) Subject's naval record  
(3) Navy and Marine Corps Achievement Medal Citation

1. Pursuant to the provisions of reference (a), Petitioner, applied to this Board requesting that the other than honorable discharge (OTH) issued to him on 11 January 2006 be upgraded to honorable.

2. The Board, consisting of Messrs Genteman, Grover and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 28 August 2012 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's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 11 March 2002 for a term of four years.

d. Prior to enlisting Petitioner admitted to using marijuana but was given a waiver by Marine Corps officials based on his assurances that he would refrain from illegal drug use if he were allowed to enlist. During his initial enlistment processing Petitioner was fully briefed on the Marine Corps' zero tolerance drug policy and the consequences of any violations of that policy.

e. Petitioner's record showed he deployed twice to Iraq and engaged in combat operations against insurgent forces. During his second deployment he was cited for personal heroism while under fire from enemy forces and awarded the Navy and Marine Corps Achievement Medal. The citation setting forth Petitioner's actions that formed the basis for this award is attached at enclosure (3).

f. After his return from Iraq Petitioner received nonjudicial punishment (NJP) for illegal drug usage (marijuana). He admitted to using marijuana more than once in order to alleviate such problems as sleeping, nightmares, survivor guilt and anger management. Medical authorizes subsequently diagnosed Petitioner as suffering from a mild form of posttraumatic stress disorder (PTSD). On 31 October 2005 Petitioner received a second NJP for violating a domestic protective order by engaging in authorized contacts with his spouse. Eventually Petitioner was administratively discharged with an OTH due to drug abuse after having served a little over three years and ten months of his four year enlistment.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that as a matter of clemency partial relief is warranted. Specifically Petitioner's OTH should be upgraded to general under honorable conditions. However the Board also concludes that his request for a fully honorable should be denied. The Board bases its recommendation for partial relief on Petitioner's individual heroic bravery under fire on several occasions during his service in Iraq as well as the fact that his unlawful use of marijuana was to some extent due to his combat related PTSD. Although these factors provide sufficient mitigation to upgrade his OTH to general they cannot excuse or justify Petitioner's willful commission of the serious offense of unlawfully using drugs after having been fully briefed on the Marine Corps' zero tolerance drug policy and granted a waiver to enlist due to pre-service use of marijuana. Under these circumstances the Board believes a fully honorable discharge is not warranted even as a matter of clemency.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that 11 January 2006 he was issued a general discharge under honorable conditions in lieu of the other than honorable discharge originally issued on that date.

b. That Petitioner's request for an honorable discharge be denied.

c. That upon request, the Department of Veterans' Affairs be informed that Petitioner's application was received by the Board on 13 July 2012.

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

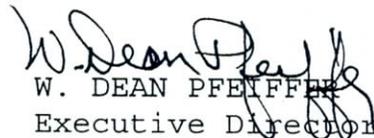
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN  
Recorder

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 Regulations, Section 723.6[e]), and having assured compliance with its provisions, it is hereby announced that the foregoing 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