



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

CRS
Docket No: 1216-99
29 August 2000

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 w/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, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 22 July 1971.

2. The Board, consisting of Mr. Frankfurt, Mr. Geisler, and Mr. Morgan, reviewed Petitioner's allegations of error and injustice on 23 August 2000 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 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 6 March 1968 at age 18. At that time he had completed ten years of formal education. It appears that he served in Vietnam from 31 July 1968 to 18 March 1969, participated in 16 operations, and was awarded three Purple Hearts.

d. The record reflects that after returning from Vietnam, Petitioner received three nonjudicial punishments and was convicted by two summary courts-martial. The offenses included

failure to obey a lawful order on two occasions, disrespect on three occasions, dereliction of duty, resisting arrest, breach of the peace by engaging in a fight, losing a M-14 rifle and changing the rifle custody index card.

e. On 28 April 1971 an administrative discharge board recommended that Petitioner be separated with an undesirable discharge by reason of unfitness. After review by the discharge authority, the recommendation for separation was approved and Petitioner was discharged with an undesirable discharge on 22 July 1971.

f. Petitioner admits to his misconduct and states he was young and immature at the time. He would like to have his discharge upgraded for the benefit of his children.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action as a matter of clemency, based on his record of service in Vietnam. The Board particularly relies on the award of three Purple Hearts, combat record, and unblemished service while in Vietnam. Consequently, the Board finds that relief in the form of recharacterization to general is appropriate.

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 general discharge by reason of unfitness on 22 July 1971, vice the undesirable discharge actually issued on that date.

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

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 17 February 1999.

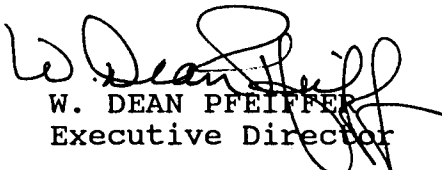
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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 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
Executive Director