



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

TRG  
Docket No: 6665-00  
14 June 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting that his record be corrected to show a better characterization of service than the general discharge issued on 31 March 1994 and to change the reason for discharge to physical disability.

2. The Board, consisting of Mr. Ensley, Mr. Pfeiffer and Mr. Cooper, reviewed Petitioner's allegations of error and injustice on 5 June 2001 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 Petitioner's application 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 21 June 1993 at age 13. On 8 November 1993 he was counseled concerning his poor attitude and for holding his superiors in contempt. Subsequently, he was referred to a physical evaluation board (PEB). The PEB report states, in part, as follows:

.... The patient (Petitioner) had an injury in boot

camp, stating that a locker fell on his foot which created right arch pain. The patient recovered from that and returned to normal duty. The patient had several other visits where he was diagnosed with plantar fasciitis to his right foot and treated conservatively for plantar fasciitis with nonsteroidal anti-inflammatories and shoe gear changes. The patient's chief complaint at this time is pain, plantar to his first metatarsal head where he has no history of trauma. The patient has been treated for the pain under his first metatarsal head with modifications to his shoe gear without relief.

The PEB found that he had a congenital problems with his right foot which existed prior to his entry into the Marine Corps and which was not service aggravated, and recommended his discharge from the Marine Corps.

d. On 28 January 1994 Petitioner received nonjudicial punishment for a six hour unauthorized absence from his duty as firewatch. The punishment included restriction, extra duty and forfeiture of pay. However, the entire punishment was suspended for three months. On 2 March 1994 he was notified of separation processing by reason of erroneous enlistment, and that he was being recommended for a general discharge because of the nonjudicial punishment. On 17 March 1994 the discharge authority directed a general discharge by reason of erroneous enlistment and he was so discharged on 31 March 1994. At that time he was assigned an RE-3P reenlistment code.

e. Petitioner has submitted evidence showing that on 9 August 1999 the Department of Veterans Affairs (DVA) found that his foot problem was service connected and rated his disability at 10% disabling, retroactive to 1 January 1995. The DVA noted that although he had a congenital problem with his foot, it was at least as likely as not that his continuing foot pain was compatible with foot trauma while in the Marine Corps. Petitioner is contending that his foot problems began due to the negligence of a drill instructor which resulted in a foot locker being dropped on his foot. He is requesting an honorable discharge and a change in the reason for discharge to either physical disability retirement or a medical discharge with severance pay.

f. Petitioner has previously requested disability retirement or a medical discharge from the Board, which was denied. In addition, several requests for reconsideration on this issue have also been denied. Since he has not submitted anything new concerning this issue, there is no basis for



reconsideration. Therefore, the case was only accepted so the Board could consider his request to recharacterize the discharge from general to honorable.

g. The Board is aware that when an individual is discharged due to an erroneous enlistment the characterization of service is the type warranted by the service record, which is normally based on conduct and proficiency averages computed from marks assigned during periodic evaluations. It appears that Petitioner was never evaluated in his short period of service. In such a situation, the regulations allow the discharge authority to determine if an honorable or a general discharge is appropriate.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that he only had one disciplinary infraction for a relatively minor offense and one other unrelated counseling entry. The Board also notes that his foot pain may have had an impact on his attitude and behavior. Given the circumstances, the Board concludes that in retrospect, an honorable discharge by reason of erroneous enlistment was warranted in this case.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 31 March 1994 he was issued an honorable discharge by reason of erroneous enlistment vice the general discharge now of record.

b. That 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



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