



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

CRS
Docket No: 7717-00
20 July 2001

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 by changing the characterization of his separation from under honorable conditions to fully honorable. He also requests a more favorable reenlistment code than RE-4 and removal of any page 11 entries referencing a summary court-martial.

2. The Board, consisting of Messrs. Pfeiffer, Ensley and Taylor, reviewed Petitioner's allegations of error and injustice on 27 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 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 16 July 1985 at age 17. At the time of enlistment he had completed 12 years of formal education.

d. The record reflects that on 17 March 1988 Petitioner received nonjudicial punishment for theft of a noon meal.

e. The record reflects that Petitioner was an unauthorized absentee from 2 June to 21 September 1988, a period of about 81 days. A summary court-martial convened on 21 September 1988 and apparently convicted him of this period of unauthorized absence. The summary court-martial itself is not contained in the record. However, the record still contains two page 11 entries dated 24 August and 21 September 1988, which advise Petitioner of his rights in connection with the summary court-martial. Petitioner received a second nonjudicial punishment on 23 June 1989 for failure to obey a lawful order.

f. On 4 October 1989 Petitioner was separated under honorable conditions at the expiration of his enlistment and transferred to the Marine Corps Reserve. At that time he was assigned a reenlistment code of RE-4. An undated service record entry in the record reflects that this code was assigned "because of court-martial." On 27 October 1992 Petitioner received an honorable discharge from the Marine Corps Reserve.

g. On 22 October 1997, the Judge Advocate General set aside the findings and sentence of the 21 September 1988 summary court-martial. This action was taken because the summary court officer, a warrant officer, was not a commissioned officer and, therefore, was not authorized to conduct the court-martial.

h. Character of service is based, in part, on one's conduct and proficiency averages, both of which are computed from marks assigned during periodic evaluations. Petitioner's conduct and proficiency averages were 3.9 and 4.2, respectively. The minimum marks required for a fully honorable characterization of service, at the time of Petitioner's separation were 4.0 in conduct and 3.0 in proficiency. The record reflects that no adverse marks were assigned in connection with the summary court-martial conviction.

i. Applicable directives authorize the assignment of an RE-4 reenlistment code to an individual who completes his enlistment but is not recommended for reenlistment due to disciplinary actions or poor performance.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, since the Marine Corps initially failed to cleanse Petitioner's record of all references to the summary court-martial, the Board notes that the two page 11 entries of 24 August and 21 September 1988. Additionally, the last undated page 11 entry should be modified to remove the reference to the court-martial.

However, the Board concludes that the under honorable conditions separation should not be changed given the two NJP's, the lengthy period of unauthorized absence, and the fact that Petitioner's conduct average was insufficiently high to warrant a fully honorable discharge. In this regard, the Board notes that since no adverse marks were assigned in connection with the court-martial, his conduct average was not affected by the disciplinary action. Even though Petitioner did receive an honorable discharge from the Marine Corps Reserve, the Board does not know why this more favorable characterization of service was assigned, and it appears to be erroneous.

Although Petitioner has requested that his reenlistment code be changed, the Board notes that the RE-4 reenlistment code is authorized by regulatory guidance for individuals separated upon the expiration of enlistment. The Board believes the code is still appropriate and would have been assigned even without the court-martial given the disciplinary actions of record, the unauthorized absence, and the characterization of service as under honorable conditions instead of fully honorable.

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 by removing the page 11 entries of 24 August and 21 September 1988, and modifying the last undated page 11 entry in the record by removing the words "because of court-martial."

b. That no further relief be granted.

c. 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.

d. 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. 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.



For W. DEAN PFEIFFER
Executive Director