



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

ELP:jdh
Docket No: 8505-00
20 July 2001



A three-member panel of the Board, sitting in executive session, considered your application and recommended that your naval record be corrected as set forth in the attached report dated 31 May 2001. In accordance with current regulations, the designated representative of the Assistant Secretary of the Navy for Manpower and Reserve Affairs conducted an independent review of the Board's proceedings and by his memorandum of July 10, 2001, disapproved the panel's recommended action. A copy of the designated representative's memorandum is also attached.

You are advised that reconsideration of your case will be granted only upon the presentation of new and material evidence not previously considered by the Board and then, only upon the recommendation of the Board and approval by the Assistant Secretary .

It is regretted that a more favorable reply cannot be made.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

JUL 10 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

I have carefully considered Subject's limited education, low test scores, combat service, and the fact that he was wounded in action. I have also considered the documentation relating to post-traumatic stress disorder (PTSD), and Petitioner's contentions of family problems and exposure to Agent Orange. However, I believe these mitigating factors are outweighed by Subject's misconduct. After three nonjudicial punishments, he was very fortunate to receive a relatively lenient sentence from the special court-martial that convicted him of a lengthy period of unauthorized absence. It is apparent that Subject did not learn from this experience since he departed on another prolonged period of absence only a few days after being released from confinement. Subject received considerable clemency when his request for an undesirable discharge was approved since by this action, he was spared further confinement and a punitive discharge. His post-service conviction for aggravated assault also militates against corrective action.

Subject provides no evidence to support his contentions of family problems or exposure to Agent Orange. Although the decisional document of the Naval Discharge Review Board alludes to the possibility of post-traumatic stress disorder (PTSD), Petitioner does not now raise this issue, or submit any evidence to show that he now has PTSD, or has ever suffered from this disorder.

Accordingly, the Board's recommendation is disapproved and Subject's request for recharacterization of his discharge is denied.

[REDACTED]

Assistant General Counsel
(Manpower And Reserve Affairs)



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ELP
Docket No. 8505-00
31 May 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) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlistment member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable discharge than the undesirable discharge issued on 23 March 1971.

2. The Board, consisting of Messrs. Pauling, McCulloch, and Lippolis, reviewed Petitioner's allegations of error and injustice on 23 May 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 (a) 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 2 May 1967 for four years at age 18.

d. At that time, he had completed nine years of formal education and achieved test scores which placed him in Mental Group IV. He was assigned to duty in Vietnam in October 1967, where he was wounded in action on 16 May 1968, and awarded the Purple Heart Medal. Petitioner was advanced to CPL (E-4) and was medically transferred on 9 October 1968 to the Naval Hospital in Oakland, CA, for treatment of malaria. Petitioner's service in Vietnam resulted in the award of the Combat Action Ribbon.

e. Petitioner returned to duty in January 1969 and served the next two months without incident. However, during the five month period from March to August 1969 he received three nonjudicial punishments (NJP) for two periods of unauthorized absence (UA) totalling about 29 days and failure to obey a lawful order. He went UA again for 36 days, from 15 October to 20 November 1969, for which no disciplinary action is shown in the record.

f. On 15 July 1970 Petitioner was convicted by special court-martial of a 116 day period of UA, from 22 November 1969 to 18 March 1970. He was sentenced to confinement at hard labor for three months and reduction in rank to PVT (E-1). The convening authority approved the sentence but suspended the confinement in excess of one month for a period of six months.

g. On 31 July 1970, two days after his release from confinement, Petitioner went UA again for a period of 99 days, returning on 7 November 1970. On 22 December 1970 Petitioner submitted a request for an undesirable discharge for the good of the service in lieu of trial by court-martial for this period of UA. Prior to submitting his request he conferred with a qualified military lawyer at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 13 March 1971 the discharge authority directed an undesirable discharge for the good of the service. Petitioner was so discharged on 23 March 1971.

h. The Naval Discharge Review Board (NDRB) considered Petitioner's request for upgrade of his discharge on 14 December 1983. In connection with this review, Petitioner submitted an evaluation from a psychologist who stated that he presented symptoms of post traumatic stress disorder (PTSD). NDRB's

psychiatric consultant opined that the evaluation simply paraphrased diagnostic criteria for PTSD without documenting any historical data upon which the diagnostic conclusions were based.

i. Petitioner states that he went UA because of family problems and did not know where to turn to for help. He claims that is now having medical problems due to his exposure to Agent Orange. With his application, he submits a character reference from his pastor.

j. A report from the Federal Bureau of Investigation reveals that in 1990, Petitioner was placed on probation after being convicted of assault with a deadly weapon.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board first notes his limited education and low test scores. More importantly, Petitioner served in Vietnam, was promoted, was wounded in combat, and subsequently contracted malaria. Although he had significant misconduct, the Board notes it began after nearly two years of highly satisfactory service, which included his combat experience in Vietnam. The Board further notes that many individuals returning from Vietnam had severe adjustment problems which were not recognized until some years later. Petitioner's record appears to present a classic example of such an individual whose Vietnam experience significantly impaired his ability for further satisfactory service. In this regard, the Board notes the conclusion of the psychologist who submitted an evaluation to NDRB. Accordingly, the Board believes Petitioner's misconduct is mitigated by his exemplary combat service in Vietnam where he was wounded and contracted malaria, and by the adjustment problems he encountered upon his return to the United States. The Board therefore concludes that it would be appropriate and just to recharacterize his undesirable discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was discharge under honorable conditions on 23 March 1971 by reason of good of the service vice the undesirable discharged 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 15 December 2000.

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. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and Approved: