



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

JRE
Docket No: 8619-00
20 July 2001

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was honorably discharged from the Marine Corps for a reason other than fraudulent enlistment.
2. The Board, consisting of Messrs. Bishop, Lightle and Neuschafer, reviewed Petitioner's allegations of error and injustice on 14 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 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 completed a Standard Form (SF), Report of Medical History, on 23 February 1990 as part of his pre-enlistment physical examination, in which he denied having a history of asthma. He enlisted in the Marine Corps on 3 October 1990. On 4 October 1990, he disclosed a history of childhood asthma, but indicated that the condition had been asymptomatic for four years. On 17 October 1990, he sought medical care for shortness of breath, and admitted to several recent asthma attacks, to include one which had occurred about a month earlier. He was discharged from the Marine Corps by reason of fraudulent

enlistment on 26 October 1990, based on his failure to disclose his history of asthma.

d. Marine Corps Order P1900.16D, MARCORSEPMAN, paragraph 6204.3d, then in effect, provided that the Standard Form 93 "...shall not be used as a basis for processing a recruit for discharge due to fraudulent enlistment."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the provisions of the MARCORSEPMAN cited above, the Board finds the existence of an injustice warranting corrective action; however, as Petitioner did not complete more than 180 days of service, he was in an entry level status, and thus not eligible for a characterized discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 26 October 1990, he was discharged by reason of Secretarial plenary authority, vice fraudulent entry.

b. That so much of Petitioner's request for correction of his naval record as exceeds the foregoing be denied.

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

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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


JAMES R. EXNICIOS
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