



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

TRG  
Docket No: 8689-00  
23 August 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) HQMC Memo 1741 MMSR-6 of 10 Apr 01  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former officer in the Marine Corps Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he was not discharged on 4 May 2000 and that he was promoted to CAPT (O-3).

2. The Board, consisting of Mr. Taylor, Mr. Novello and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 31 July 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps Reserve on 16 November 1988 and then earned six consecutive qualifying years for reserve retirement. He was commissioned a 2ndLT in the Marine Corps Reserve on 16 December 1994. He then performed a series of extended periods on active duty and earned five consecutive qualifying years for reserve retirement. The record shows that he served in an excellent manner, advancing in rank to 1stLT and earning the Navy Achievement Medal.

d. Petitioner signed an oath of office for the California National Guard on 5 May 2000. Headquarters Marine Corps was informed of this action on 13 September 2000. Therefore, he was

honorably discharged from the Marine Corps Reserve retroactive to 4 May 2000, the day prior to his signing the oath of office.

e. On 12 September 2000 a message was released showing that Petitioner had been selected for promotion to CAPT with a date of rank of 1 July 2000. However, as indicated, his discharge was effective on 4 May 2000.

f. On 13 October 2000 Petitioner was informed that his appointment in the California National Guard had not been finalized because consideration by a Federal Recognition Board was required before he could be accepted into the Guard. On 22 November 2000 HQMC informed Petitioner that they did not have authority to rescind a discharge, and he was advised to apply to this Board if he believed an injustice had occurred. His application to the Board was received on 28 December 2000. He states that he desires a correction to the record to show that he was not discharged so he can join a reserve unit.

g. At enclosure (2) is an advisory opinion from HQMC which recommends that Petitioner's request be denied. This recommendation was made because there was no error on the part of HQMC, which properly discharged him effective 4 May 2000, and the error should be corrected by the California National Guard.

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 the error made by the California National Guard resulted in his discharge from the Marine Corps Reserve, and through no fault of his own he now has no status in any military component. Therefore, the Board believes an injustice has occurred. Given the circumstances, the Board concludes that the record should be corrected to show that he was not discharged on 4 May 2000 but continued to be a member of the Marine Corps Reserve. This action will result in his promotion to CAPT with a date of rank of 1 July 2000.

Given his record of earning 11 consecutive qualifying years for reserve retirement, the Board believes that if Petitioner had not been discharged from the Marine Corps Reserve he probably would have continued to earn retirement points. Therefore, the Board further concludes that he should be credited with four nonpay retirement points in each month from 1 January 2001 (the first month following his application) through the month this recommendation is approved.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that that he was not discharged on 4 May 2000 but continued to serve in the Marine Corps Reserve. Since he will be a member of the Marine Corps Reserve he should be promoted to CAPT as set forth in the promotion message from HQMC.

b. That Petitioner be credited with four nonpay retirement points from 1 January 2001 and continuing through the month of approval of this recommendation.

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 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.

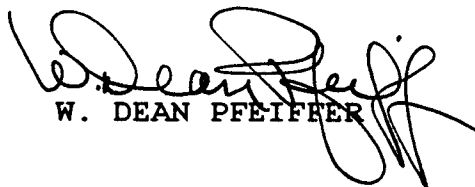
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



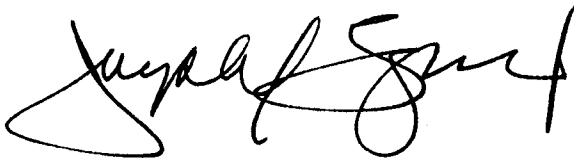
ALAN E. GOLDSMITH  
Acting Recorder

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



W. DEAN PFEIFFER

Reviewed and approved:



NOV 28 2001

**JOSEPH G. LYNCH**  
Assistant General Counsel  
(Manpower And Reserve Affairs)