



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

TJR:jdh
Docket No: 3109-01
8 October 2002

[REDACTED]

[REDACTED]

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 26 October 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 4 October 2002, 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

Enclosures



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

TJR
Docket No: 3109-01
26 October 2001

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

Subj: REVIEW OF NAVAL OF RECORD [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 enlisted member of the Marine Corps, applied to this Board requesting that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. Pauling and Taylor and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 23 October 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 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 first enlisted in the Marine Corps on 18 October 1967 at age 18. During this first period of service he served in Vietnam for about three months, during which he participated in eight combat operations and received two awards of the Purple Heart. He was medically evacuated from Vietnam after being wounded for the second time. He received no disciplinary actions during his first enlistment. On 31 March 1969 he was honorably discharged for the purpose of immediate reenlistment.

d. After reenlisting on 1 April 1969, Petitioner was advanced to the temporary rank of CPL/(E-4), his highest rank. However, he then received nonjudicial punishment on eight occasions and was convicted by summary court-martial. His offenses were four periods of unauthorized absence (UA) totalling about nine days, failure to go to his appointed place of duty, false official statement, two instances of wrongful possession of a liberty pass, disobedience, sleeping on post, and two specifications of breaking restriction. These disciplinary actions resulted in his reduction in rank to PVT/(E-1).

e. On 2 July 1970 Petitioner submitted a written request for an undesirable discharge by reason of good of the service in lieu of court-martial for a three day period of UA, communicating a threat, breaking restriction, and larceny of \$220 from a Sailor. Subsequently, Petitioner's request was granted, and on 20 August 1970 he received an undesirable discharge.

f. In Petitioner's application he contends that his alcohol abuse was the cause of his misconduct and that such abuse "destroyed my life for the past 25 years." However, he states that he has now completed a regimen of alcohol rehabilitation. He has also submitted a supporting letter from the State of New York's Veterans Affairs Office.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board initially notes Petitioner's youth and immaturity and especially his unblemished period of prior honorable service, during which he served in Vietnam and was twice wounded in combat.

The Board is very much aware that during his second period of service, he compiled a record of multiple disciplinary actions and requested discharge for further offenses. The Board does not condone this misconduct. However, the Board notes that much of the misconduct resulting in disciplinary action was relatively minor. The Board realizes, however, that larceny of over \$200 from a fellow servicemember, one of the offenses that prompted Petitioner's request for discharge, is a serious offense.

The Board also concludes that although alcohol abuse does not excuse Petitioner's misconduct, his apparent alcohol problem was a contributing factor in his disciplinary record. Further, the Board believes that Petitioner had a difficult time adjusting to service in a noncombat environment after his trying experience in Vietnam.

Accordingly, the Board concludes that no useful purpose is served by continuing to characterize his second period of service as having been under other than honorable conditions, and relief in the form of recharacterization to a general discharge is appropriate.

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 to show that Petitioner received a general discharge on 20 August 1970, vice the undesirable discharge actually issued on that same day.

b. That a copy of 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.



Recorder



Acting Recorder

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



Reviewed and approved:



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

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

Subj: REVIEW OF NAVAL OF RECORD 

The findings of the Board are approved. However, I do not agree with the Board's recommendation to upgrade Subject's undesirable discharge to general. In this regard, I have carefully considered Subject's youth and immaturity and prior honorable service in Vietnam, during which time he was wounded twice. I also note his contention that alcohol abuse contributed to his misconduct, and the Board's belief that he had trouble adjusting to military life after his Vietnam service. However, I believe these mitigating factors are clearly outweighed by the serious nature of Subject's repetitive misconduct. He received eight nonjudicial punishments and was convicted by special court-martial, and then requested an undesirable discharge in lieu of court-martial for offenses that included theft of \$220 from a fellow servicemember, a serious offense. Further, Subject received considerable clemency when his request for discharge was approved and he was spared confinement and a punitive discharge. Accordingly, the Board's recommendation is disapproved, and Subject's request for recharacterization of his discharge is denied.


Assistant General Counsel
(Manpower and Reserve Affairs)