



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

ELP
Docket No. 5252-01
14 January 2002

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 Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the bad conduct discharge issued on 8 February 1946.

2. The Board, consisting of Messrs. Hogue, Ivins, and McBride reviewed Petitioner's allegations of error and injustice on 9 January 2002 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 Petitioner's application to the Board 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 15 January 1942 for four years at age 20. At the time of his enlistment, he had completed seven years of formal education and attained test scores which placed him in Mental Group IV.

d. The record reflects that Petitioner served only four months without incident. During the months of April and May 1942, he was convicted by a deck court and received a nonjudicial punishment (NJP) for two periods of absence over leave totaling about 12 days.

e. During the period from 7 August to 21 December 1942, Petitioner participated in landing operations at Guadalcanal, where he served for more than four months in combat. His division was awarded the Presidential Unit Citation. The medical record reflects that in October 1942, while on Guadalcanal, Petitioner injured his knee falling over a tree stump. During this period, he was advanced to PFC (E-2).

f. On 30 June 1943 Petitioner was convicted by summary court-martial of three instances of absence over leave totalling about 40 days and breaking arrest. Sentence imposed consisted of 30 days of solitary confinement on bread and water with a full ration every fifth day, and forfeitures of \$25 pay per month for six months. The medical record reflects Petitioner was hospitalized on 25 July 1943 for benign malaria and returned to duty in on 11 August 1943

g. On 15 July 1943 Petitioner was reduced in rank due to his unfitness to hold the rank of PFC. He served the next 12 months without incident, during which he participated in operations against Japanese forces at Cape Gloucester, NB from 24 March-23 April 1944.

h. Petitioner was convicted by deck court in July 1944 for failure to wear his shirt in a malaria zone. The medical record reflects on 30 August 1944 he was found unfit for combat duty due to chronic arthritis in the knee he hurt on Guadalcanal and he was transferred to the Naval Hospital at San Diego, CA.

i. On 23 May 1945 Petitioner was by convicted a second a summary court-martial of absence over leave for about 19 days.

j. On 10 September 1945 Petitioner was convicted by general court-martial of a 31 day absence without leave. He was

sentenced to confinement for 33 months, total forfeitures, and a bad conduct discharge. On 14 September 1945 the convening authority reduced the confinement and forfeitures to 18 months. Petitioner appeared before the clemency and restoration board on 19 January 1946 and rejected consideration for restoration to duty. That board concluded that in spite of his favorable combat record, his adjustment in the Marines had been poor and he was unreliable. The board recommended that the bad conduct discharge be executed upon completion of one-third of the sentence to confinement. On 23 January 1946, the Secretary of the Navy remitted the unexecuted portion of confinement and directed execution of the bad conduct discharge. Petitioner was so discharged on 8 February 1946.

k. With his application, Petitioner has submitted letters attesting to his good character. A recent report from the Federal Bureau of Investigation states that in 1946 he was convicted by civil authorities of carrying a concealed weapon and sentenced to a fine of \$25 or 10 days in jail. He has no other convictions of record.

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 notes Petitioner's youth and immaturity, limited education, World War II combat service, and letters of reference attesting to his good character and post-service conduct. The Board further notes that Petitioner's misconduct was limited to absence over leave offenses, two of which were over 30 days. While the Board does not condone such misconduct during a period of wartime, the Board notes that his service in combat appears to have been exemplary. The Board believes that his combat service mitigates his overall misconduct and also believes the knee injury on Guadalcanal was sufficiently severe to constitute an additional mitigating factor. In sum, Petitioner put his life on the line for his country and the Board believes the sentence to a bad conduct discharge, even if appropriate at the time, should now be recharacterized as a matter of clemency. Accordingly, the Board concludes that it would be appropriate and just to recharacterize the discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 8 February 1946 vice the bad conduct discharge actually issued on that date.

b. That this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 2 July 2001.

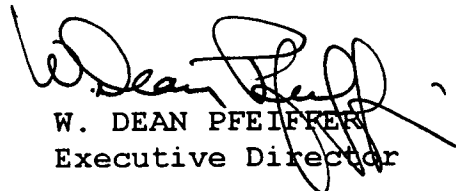
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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.



W. DEAN PFEIFFER
Executive Director