



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

ELP
Docket No. 5955-01
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
(b) MCSM 6311

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 he was not reduced to LCPL (E-3) upon discharge, but was separated as a SGT (E-5).

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 reenlisted in the Marine Corps on 1 February 1988 for four years as a SGT (E-5). At the time of his

reenlistment, he had completed nearly eight years of prior active service.

d. Petitioner served without incident until 22 June 1989 when he received nonjudicial punishment (NJP) for two instances of failure to go to his appointed place of duty. Punishment imposed consisted of forfeitures of \$600 per month for two months, suspended for a period of six months; and 30 days of extra duty.

e. During the four month period from August to November 1989, Petitioner was formally counseled on four occasions regarding his being placed on weight control, failure to make satisfactory progress during the past two months in the command weight control program, failure to go to appointed place of duty two times, and negligent performance of duty by certifying fund availability for travel in excess of authorized funds.

f. On 2 November 1989 Petitioner was notified that he was being recommended for discharge under other than honorable conditions (UOTHC) by reason of misconduct due to minor disciplinary infractions. He was advised of his procedural rights, declined to consult with legal counsel and waived right to present his case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge UOTHC by reason of misconduct due to minor disciplinary infractions. The discharge authority approved the recommendation and Petitioner was so discharged on 28 November 1989, and administratively reduced in rank to LCPL (E-3).

g. Reference (b) states that when a Marine serving in pay grade E-4 or above is administratively separated with an other than honorable characterization of service, the Marine shall be administratively reduced to pay grade E-3.

h. On 6 April 2001 the Naval Discharge Review Board (NDRB) reviewed Petitioner's case and concluded there was both impropriety and inequity in the characterization of his service. NDRB noted that he received only one NJP and three adverse counseling entries during the enlistment in question and opined that these offenses were offset by Petitioner's otherwise creditable service as reflected in his fitness reports. The NDRB upgraded Petitioner discharge to Honorable and changed the reason to Secretarial Authority. On 13 July 2001 the NDRB advised Petitioner it did not have the authority to restore his rank and advised him to petition this Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Since the record has been corrected to show Petitioner was honorably discharged, the requirements of reference (b) are no longer applicable. The Board accordingly concludes that the record should be corrected to show that he was not administratively reduced in rank to LCPL (E-3), but was honorably discharged in the rank of SGT.


RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that Petitioner was honorably discharged on 28 November 1989 in the rank of SGT vice LCPL now of record. This should include the issuance of a new DD Form 214 and an Honorable Discharge Certificate.

b. That a copy of the 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.

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