



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

JRE
Docket No: 8245-01
6 February 2002

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 discharged by reason of physical disability, with a characterized separation. He contends that he needs a characterized separation in order to qualify for medical benefits, and states that when he signed a waiver of his right to appear before a physical evaluation board, he did not understand that he was possibly giving up medical coverage for a present medical condition.

2. The Board, consisting of Ms. Nofziger and Messrs. Chapman and Kim, reviewed Petitioner's allegations of error and injustice on 31 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. Enclosure (1) was filed in a timely manner.

c. Petitioner served on active duty in the Marine Corps from 13 September 2000 to 5 September 2001, when he was discharged with an uncharacterized separation by reason of a condition, not a disability, interfering with his performance of duty. He was discharged because of chronic shoulder pain which was not considered to be a disability. He was discharged pursuant to his request, after he waived his right to appear before a Physical Evaluation Board.

CONCLUSION:


Upon review and consideration of all the evidence of record, the Board was not persuaded that Petitioner was unfit to perform the duties of his office, grade, rank or rating by reason of physical disability. It concluded that he was properly separated from the Marine Corps by reason of a condition, not a disability, which interfered with his performance of duty. It noted, however, that as his separation processing was not initiated until after he had completed 180 days of active duty service, he should have received a characterized discharge, rather than an uncharacterized entry level separation.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

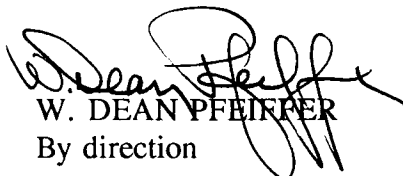
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was honorably discharged from the Marine Corps on 9 September 2001.
 - 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.


W. DEAN PFEIFFER
By direction