



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

CRS  
Docket No: 8378-02  
31 December 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 Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by changing the general discharge, reason for discharge, and the RE-3C reenlistment code issued on 27 October 1987.

2. The Board, consisting of Messrs. Pfeiffer, Novello, and Dunne, reviewed Petitioner's allegations of error and injustice on 11 December 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 enclosure (1) was not filed in 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 23 July 1981.

d. Petitioner's record reflects that he was convicted by a general court-martial (GCM) of conspiracy to possess marijuana with intent to distribute, possession of drug paraphernalia, and possession of marijuana with intent to distribute. Petitioner pled guilty to all charges. The sentence imposed consisted of confinement at hard labor for three and one-half years, total

forfeitures, a reduction in rank from lance corporal (LCPL;E-3) to private (PVT;E-1), and a bad conduct discharge.

e. On 8 April 1987 the findings and sentence of the GCM were set aside by the Court of Military Appeals. A rehearing was authorized. However, on 16 September 1987 the GCM convening authority dismissed the charges and directed restoration of all rights privileges and property of which he had been deprived by the court-martial sentence. Accordingly, Petitioner was restored to rank of LCPL.

f. On 27 October 1987 Petitioner received a general discharge by reason of expiration of term of service. At that time, Petitioner was assigned a reenlistment code of RE-3C.

g. When an individual is separated due to expiration of enlistment, character of service is based on one's conduct and proficiency averages, both of which are computed from marks assigned during periodic evaluations. Petitioner's conduct and proficiency averages were 3.7 and 4.0, respectively. A minimum average conduct mark of 4.0 was required for a fully honorable characterization of service at the time of separation. However, the conduct average includes a mark of "0" given upon the initial reduction in rank from LCPL to PVT. Without the mark of zero, the conduct average would have been 4.2.

h. Applicable directives authorize the assignment of an RE-3C reenlistment code to an individual discharged due to expiration of term of service.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board concludes that his general discharge should be recharacterized to honorable. In this regard, the Board notes that about the conduct mark of "0" assigned upon Petitioner's reduction in rank, his average would warrant an honorable discharge. Since that reduction has now been set aside, the Board concludes that the ensuing conduct mark should be disregarded. However, the Board believes that the reason for discharge was appropriate since dismissal of the GCM charges resulted in separation by reason of expiration of enlistment. Further, the Board believes that the reenlistment code of RE-3C is appropriate since the court-martial conviction and sentence were overturned due to an evidentiary matter and not because of Petitioner's innocence.

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 issued an honorable discharge by reason of expiration of term of service on 27 October 1987 vice the general discharge actually issued on that date.

b. That the mark of zero given at the time Petitioner's reduction in pay grade at the now removed GCM be deleted, making his overall conduct average 4.2.

c. That no further relief be granted.

d. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

e. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 4 September 2002.

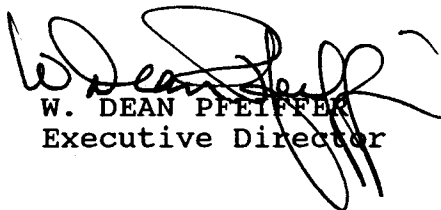
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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