



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

SMW
Docket No: 5388-07
23 January 2008

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) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, applied to this Board requesting to change the reenlistment code OF RE-4 that he received on 29 September 2000.
2. The Board, consisting of Ms. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 16 January 2008, 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. On 13 March 2000, Petitioner enlisted in the Marine Corps at age 19.
 - d. On 21 July 2000, Petitioner received a psychiatric evaluation during which he disclosed that he was diagnosed with depression at age 15 and prescribed medication at that time. He further stated that his depression improved, but he believed that he relapsed and might harm himself. The evaluation concluded by diagnosing him as having depression.

e. On 25 August 2000, Petitioner was counseled regarding fraudulent enlistment due to his failure to disclose his diagnosis of depression and criminal record. On 29 August 2000, he made a voluntary statement in which he stated that he withheld information regarding his depression and criminal history before enlistment and believed his depression had worsened and he could not survive in the military environment.

f. On 1 September 2000, Petitioner's commanding officer initiated administrative separation by reason of defective enlistment due to fraudulent enlistment. In connection with this processing, Petitioner acknowledged that separation could result in an other than honorable (OTH) discharge and waived the right to have his case heard by an administrative discharge board (ADB). On 1 September 2000, his commanding officer recommended an OTH discharge. On 15 September 2000, the separation authority approved the discharge recommendation and directed an OTH discharge by reason of fraudulent enlistment. On 29 September 2000, he was so discharged and assigned an RE-4 reenlistment code.

g. In his application, Petitioner states that he disclosed the legal and psychiatric information to his recruiter before enlistment, but the recruiter forged his criminal record check without his knowledge during the enlistment process. He further states that his recruiter then advised him not to disclose this to anyone or both of them would be reprimanded. He further states that the statements he made at that time to expedite discharge were false.

h. Regulations in effect at the time that Petitioner was discharged stated that if fraudulent entry involved concealment of a prior separation from the service in which the character of service was not honorable, characterization would normally be under OTH conditions. Regulations in effect at that time further stated that an OTH characterization might be issued when the reason for separation was based upon behavior, or omission, that constituted a significant departure from the conduct expected of a Marine, such as acts or omissions that endanger the security of the Marine Corps or deliberate acts or omissions that seriously endangered the health and safety of others.

i. Regulations published nine months after Petitioner was discharged stated that characterization of service under OTH conditions might only be issued when the fraud involved concealment of a prior separation in which service was not characterized as honorable and in all other cases service would be characterized as honorable, general or uncharacterized.

j. Regulations further state that individuals processed for separation under OTH conditions must be afforded ADB procedures

and separation that would result in no less than a general characterization of service will be processed with no ADB requirement.

k. Regulations also state that an uncharacterized separation shall be used when separation is initiated while the individual is in an entry level status, except when separation for fraudulent entry is authorized and characterization of OTH is warranted. Regulations authorize assignment of an RE-4 reenlistment code to individuals who are not recommended for reenlistment.

l. Petitioner was in an entry level status at the time administrative separation was initiated, since he had less than 180 days of continuous active service at that time.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's requests warrant partial relief. Specifically, the Board found Petitioner met the requirements established by regulations for an involuntary entry level separation by reason of fraudulent entry with no ADB requirement, but found no evidence in the record to show that Petitioner met the requirements for an OTH characterization of service. Given regulations that were published nine months after Petitioner was discharged that apparently clarified the previous regulation's intent regarding fraudulent entry, the Board concludes that Petitioner's separation should be changed to an uncharacterized separation by reason of fraudulent entry with no ADB requirement.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received an uncharacterized separation on 29 September 2000, vice the OTH discharge actually issued on that date.

b. That Petitioner's naval record be further corrected to show that he was discharged by reason of fraudulent entry with no ADB requirement vice fraudulent entry with ADB requirement.

c. That no further changes be made.

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

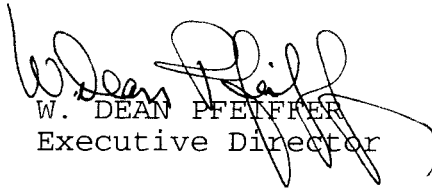
e. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 3 May 2007.

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


BRIAN J. GEORGE
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 Regulation, 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