



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

RDZ:ecb
Docket No. 10810-07
10 July 2008

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, applied to this Board requesting that his discharge be upgraded.

2. The Board, consisting of Messrs [REDACTED] F [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 9 July 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 27 October 2003 at age 19. Having successfully completed basic training and advanced infantry training, he was subsequently assigned to Battalion Landing Team (BLT) 2/8 of the 26th Marine Expeditionary Unit as a rifleman. Shortly after joining BLT 2/8 he was diagnosed as having asthma which prevented him from performing his duties as a rifleman. Accordingly he was

recommended for administrative separation. Petitioner's asthmatic condition pre-existed his entry into Marine Corps and because he failed to disclose this fact to military authorities at the time of his enlistment the commanding officer of BLT 2/8 recommended that Petitioner be separated for fraudulent enlistment; however in view of Petitioner's overall record of performance he also recommended that Petitioner be given an honorable discharge. The commanding officer of 26th Marine Expeditionary Unit concurred with these recommendations, specifically endorsing the recommendation for an honorable discharge. The discharge authority, the Commanding General, Second Marine Expeditionary Force, disapproved the recommendation for honorable discharge and directed that Petitioner be awarded a general discharge based on his fraudulent enlistment. Petitioner was so discharged on 28 January 2005.

d. At the time of his discharge Petitioner's proficiency and conduct marks both averaged 4.2 which exceeded the minimum requirements for an honorable discharge. Petitioner's only disciplinary infraction was minor one consisting of a ten hour unauthorized absence.

CONCLUSION:

Although there can be no doubt that the discharge authority was acting well within the parameters of his legal authority in issuing Petitioner a general discharge, the Board concludes that the interests of justice would be better served if, as a matter of clemency, Petitioner's general discharge is upgraded to honorable. The Board bases its recommendation on Petitioner's overall record of commendable service as evidenced by his proficiency and conduct marks as well as the favorable recommendations of the commanding officers of BLT 2/8 and 26th Marine Expeditionary Unit.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the Board's action.

RECOMMENDATION:

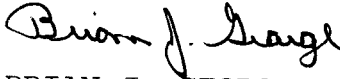
a. That Petitioner's naval record be corrected to show that on 28 January 2005 he received an honorable discharge in lieu of the general discharge actually issued on that date.

b. That upon request the Department of Veterans Affairs' be informed that Petitioner's application was received by the Board on 6 December 2007.


c. That a copy of this 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


BRIAN J. GEORGE
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having ensured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director