



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

SJN
Docket No: 03280-09
22 February 2010

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 with 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 an upgrade of his other than honorable discharge, and to change his RE-4 reenlistment code.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 February 2010 and, pursuant to its regulations, determined that the limited 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 enclosure (1) 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 enlisted and began a period of active duty on 28 December 1992 at age 19. On 23 November 1993 and 24 February 1994, he received nonjudicial punishment (NJP) for one day of unauthorized absence and failure to obey an order to reside in the enlisted barracks. Additionally, he was counseled and warned that further misconduct could result in administrative discharge action. On 24 February 1994, administrative discharge action was initiated to separate him by reason of misconduct due to commission of a serious offence. He waived his rights to consult

counsel, submit a statement or have his case heard by an administrative discharge board (ADB). On 25 February 1994, his case was forwarded to the separation authority recommending an under other than honorable (OTH) discharge by reason of misconduct. The commanding officer stated, in part, that he had been an administrative burden despite repeated efforts through counseling, instruction, and he refused to conform his behavior to Navy standards. On 14 March 1994, the discharge authority concurred and directed an OTH discharge by reason of misconduct due to commission of a serious offense. He was discharged on 4 April 1994. At that time he was assigned an RE-4 reenlistment code.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The Board does not condone Petitioner's misconduct, however, the fact that he received an OTH discharge for not residing in the enlisted barracks seems to be harsh. The Board also takes into account his youth, and short time in the service. After careful and conscientious consideration of his entire record, including his two NJP's for relatively minor disciplinary infractions, the Board concludes that the record should reflect a general characterization of service. With regard to his reenlistment code, an RE-4 must be assigned to all Sailors discharged due to misconduct. In view of the foregoing, the Board recommends the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that on 4 April 1994, he was issued a general discharge vice the OTH characterization actually issued on that date.

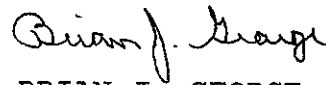
b. That no further relief be granted.

c. That a copy of this report of proceedings be filed in Petitioner's naval record.


d. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 31 March 2009.

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


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