



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

RDZ:ecb
Docket No. 12321-10
11 February 2011

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) DD Form 149 w/attachments
(2) Headquarters Marine Corps ltr dtd 1 May 09
(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 reenlistment code be changed.

2. The Board, consisting of Messrs Boyd, Chapman and Clemmons, reviewed Petitioner's allegations of error and injustice on 2 February 2011 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 enlisted in the Marine Corps on 30 June 2003. From the time of his initial enlistment until the early part of February Petitioner served in a satisfactory manner earning proficiency marks averaging 4.1, conduct marks averaging 4.2 and was eventually promoted to lance corporal (LCPL). A review of his disciplinary

record shows no civilian or military infractions warranting court-martial proceedings or nonjudicial punishment.

d. On 6 February 2004 Petitioner was hospitalized due to a fall from a third floor window of his barracks. Since his command suspected that Petitioner jumped rather than fell he was referred for psychiatric evaluation. Petitioner was evaluated by two different Navy psychiatrists on two separate occasions. Both found Petitioner had a personality disorder warranting separation from the Marine Corps. Neither psychiatrist found any suicidal or homicidal ideation.

e. In June 2004 Petitioner was told that based upon the diagnoses and recommendations of the two Navy psychiatrists his commanding officer intended to administratively separate Petitioner from the Marine Corps with a general discharge and an RE-4 reenlistment code. At this point it is important to keep in mind that Marines discharged due to a personality disorder are normally assigned an RE-3P reenlistment code which is the most favorable code under Marine Corps regulations. However an RE-4 is authorized when certain aggravating features are present such as suicidal or homicidal ideations. After being informed of his commanding officer's intentions Petitioner indicated in writing that he had no objections to this course of action. Consequently on 29 July 2004 Petitioner received a general discharge and an RE-4 reenlistment code.

f. In February 2009 Petitioner applied to the Performance Evaluation Review Branch (PERB) of Headquarters Marine Corps seeking a change of his reenlistment code. In support of his application Petitioner attached among other items an evaluation conducted by a clinical psychologist on 24 January 2009 that found no evidence of a personality disorder or other mental illness. After a thorough review of this matter PERB concluded that the evaluation conducted by the clinical psychologist which took place nearly four and one half years after Petitioner's discharge and when he was no longer under the stress and pressures of military life did not demonstrate that the diagnoses rendered by the two Navy psychiatrists in 2004 were invalid. Although PERB found that Petitioner was properly separated due to a validly diagnosed personality disorder it concluded that his reenlistment code should be upgraded from RE-4 to RE-3P due to the lack of any aggravating features warranting an RE-4. A copy of the letter informing Petitioner of PERB's decision is attached at enclosure (2).


CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concurs with PERB's findings that Petitioner was properly discharged due to a diagnosed personality disorder. The Board is also in full agreement with PERB that changing Petitioner's RE-4 reenlistment to RE-3P is warranted. The Board would also like to point out that an RE-3P reenlistment code can be waived by the Commandant of the Marine Corps while the far more restrictive RE-4 can only be waived by the Secretary of the Navy or an official designated by him to take such action.

Turning its attention to the type of discharge awarded to Petitioner the Board concludes that the interests of justice would be better served by upgrading Petitioner's general discharge to fully honorable. The Board bases this remedial action on Petitioner's clean disciplinary record, promotion to LCPL and the fact that his proficiency and conduct marks were high enough to warrant an honorable discharge under normal circumstances.


RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 29 July 2004 he was issued a fully honorable discharge in lieu of the general discharge originally issued on that date.
 - b. That Petitioner's request to change his RE-3P reenlistment code be denied.
 - c. That upon request, the Department of Veterans' Affairs be informed that Petitioner's application was received by the Board on 12 November 2010.
 - d. 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 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 provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director