SJN
Docket No: 00267-11
30 January 2012

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

Subj: REVIEW OF NAVAL RECORD OF ███████████████████████
██████████

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

Encl: (1) DD Form 149 with attachments
      (2) Case Summary
      (3) HQMC Advisory Opinion dtd 9 Nov 11
      (4) HQMC Advisory Opinion dtd 17 Jan 12

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting a change in his other than honorable (OTH) characterization of his service.

2. The Board, consisting of Mr. Zsalman, Mr. Pfeiffer, and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 24 January 2012 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statue of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 25 August 1978. During the period from 14 September 1978 to 4 November 1982, he received seven nonjudicial punishments (NJP) for four instances of disobedience, five periods of unauthorized absence (UA) totaling 80 days, and eight instances of failing to go to his appointed place of duty. On 10 November 1982, he received an OTH discharge at the completion of his required service.

d. In his application, Petitioner states that he was not given an option to have his case go before an administrative discharge board (ADB), and that no legal advice was offered or given.

e. Enclosures (3) and (4) are advisory opinions from the Headquarters Marine Corps (MMSR-3) recommending favorable action.
CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that Petitioner's request warrants full relief.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 10 November 1982 he was issued a general discharge vice the OTH discharge, now of record. Additionally, the Board directs that a new Certificate of Release or Discharge from Active Duty (DD Form 214) be issued to cover the period from "78 08 25" to "82 11 10", that block 12c should read "04 02 16", block 25 should read "MARCORPSEPMAN 1005", and block 28 should read "Expiration of enlistment".

b. That a copy of this report of proceedings be filed in Petitioner's naval record.
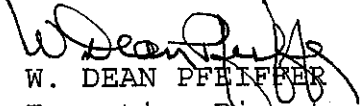
c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 5 January 2011.

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