



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TJR
Docket No: 5601-13
5 June 2014

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

Subj: REVIEW NAVAL OF RECORD [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 Marine Corps, filed an application with this Board requesting that the characterization of his bad conduct discharge (BCD) be changed. It was issued on 4 December 1970.

2. The Board, consisting of Mr. Gattis, Mr. Grover, and Ms. Trucco, reviewed Petitioner's allegations of error and injustice on 3 June 2014 and, pursuant to its regulations, a majority 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 it appears that 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. Petitioner enlisted in the Marine Corps at age 18 and began a period of active duty on 14 September 1967.

d. The record reflects that during the period from March 1968 to March 1969, while serving in the Republic of Vietnam (RVN), Petitioner participated in 16 combat operations. Also, while serving in RVN, he was wounded as a result of a hostile act of the enemy, and subsequently awarded the Purple Heart Medal.

e. In late March 1969 his unit returned to the United States, where he continued to serve without disciplinary incident until 28 August 1969, when he was convicted by summary court-martial (SCM) of a 20 day period of unauthorized absence (UA). Within the following eight months, he was again UA on three more occasions. As a result, on 7 April 1970, he was convicted by special court-martial (SPCM) of three periods of UA totalling 128 days. He was sentenced to reduction to paygrade E-1, confinement at hard labor for two months, a \$164 forfeiture of pay, and a BCD.

f. On 4 August 1970, Petitioner submitted a written request for suspension of the BCD and restoration to duty. However, his request was denied and on 4 December 1970, he was issued a BCD.

g. In his application, Petitioner states, in part, that he is now suffering from Post-Traumatic Stress Disorder (PTSD) resulting from his service in RVN. He also states that after returning from RVN he had a hard time adjusting which subsequently led to his periods of UA. Nonetheless, he requests that the Board grant him clemency in the form of a general discharge, by taking into consideration his period of honorable service, time served in RVN, and the award of the Purple Heart Medal.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Mr. Grover and Ms. Trucco, concludes that Petitioner's request warrants favorable action.

While the majority does not condone Petitioner's periods of UA while on active duty, it notes his youth, nearly two year period of satisfactory service, participation in RVN combat operations, and receipt of the Purple Heart Medal. With the foregoing in mind and as an act of clemency, the majority believes that since Petitioner has suffered the consequences of a BCD for nearly 45 years, no useful purpose is served by continuing to characterize his service as having been under other than honorable conditions. With that being said, the majority concludes that relief in the form of recharacterization to a general discharge is appropriate.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 4 December 1970 vice the BCD actually issued on that same day.

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

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 24 May 2013.

MINORITY CONCLUSION:

Mr. Gattis disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member is aware of the favorable aspects of Petitioner's record. However, the minority also notes Petitioner's periods of UA were both repetitive and lengthy and totalled about five months. Accordingly, the minority member believes that Petitioner's BCD was justified by the foregoing misconduct, and the characterization of his service should not be changed.

In view of the foregoing, the minority finds no error or injustice warranting corrective action.

MINORITY RECOMMENDATION:

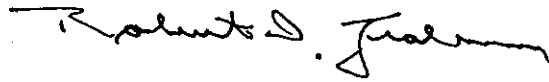
a. That Petitioner's request be denied.

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. The foregoing action of the Board is submitted for your review and action.



ROBERT D. ZSALMAN
Acting Executive Director

MAJORITY REPORT APPROVED:

MINORITY REPORT APPROVED: