



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3756-99

1 October 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, the widow of a deceased former enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting recharacterization of her husband's discharge.

2. The Board, consisting of Mr. Whitener, Ms. Hare and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 14 September 1999 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 it appears that 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. Subject enlisted in the Marine Corps for four years on 1 August 1966 at age 19. At that time he had completed 10 years of education and attained a GCT score of 88, which placed him in Metal Group IV.

d. The record shows that during the four year enlistment he served in an excellent manner, was promoted to sergeant and served in Vietnam. During his first tour in Vietnam he participated in 13 combat operations. On 8 March 1970 he began his second tour in Vietnam. On 1 August 1970 a two year extension of his enlistment became effective. He completed his second tour in Vietnam on 20 February 1971.

e. Subject continued to serve without incident until 25 March 1972. On that date he began a period of unauthorized absence which lasted until he was apprehended on 10 April 1978, a period of over six years. The record shows that on 4 May 1978 he requested a discharge under other than honorable conditions to avoid trial by court-martial for the six year period of unauthorized absence. At that time he conferred with a qualified military lawyer and was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. His request for discharge was granted on 12 May 1978 and, as a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The discharge under other than honorable conditions was issued 31 May 1978. Subject died 21 March 1997.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning the discharge on 31 May 1978 the Board notes that Subject was apprehended to terminate an unauthorized absence of over six years. The Board found that his period of good service was not sufficient to warrant recharacterization of his discharge given his lengthy period of unauthorized absence and especially his request for discharge to avoid trial for that offense. The Board believed that considerable clemency was extended to him when his request for discharge to avoid trial by court-martial was approved since, by this action, he escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that the discharge under other than honorable conditions on 31 May 1978 was proper as issued and no change is warranted.

However, the Board notes that he completed his four year enlistment in an excellent manner, which included combat duty in Vietnam and promotion to sergeant, and he would have been issued an honorable discharge on 31 July 1970 if the two year extension had not become effective. If he had reenlisted for two years instead of extending, he would have been issued a DD Form 214 showing an honorable characterization of service and an honorable discharge certificate. Given the circumstances, the Board believes that no useful purpose is now served by characterizing his entire service as having been under other than honorable conditions. Therefore, the Board concludes that the record should be corrected to show that he was honorably discharged on 31 July 1970 and that he reenlisted in the Marine Corps on 1 August 1970 for two years. With this correction, the record will continue to show that he was discharged under other than

honorable conditions on 31 May 1978.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was honorable discharged at the expiration of his enlistment on 31 July 1970 and reenlisted in the Marine Corps for two years on 1 August 1970.

b. That Petitioner's request for recharacterization of the discharge under other than honorable conditions issued on 31 May 1978 be denied.

c. That this Report of Proceedings be filed in Petitioner's naval record.

d. That the Department of Veterans Affairs be informed on request that Petitioner's application was received on 8 June 1999.

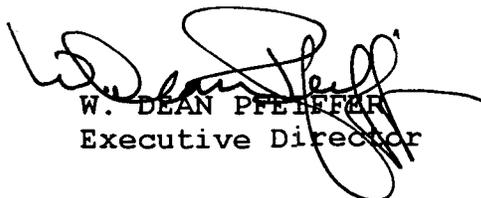
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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 authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEFFER
Executive Director