



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

CRS
Docket No: 5436-97
26 August 1999

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 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 20 November 1952.

2. The Board, consisting of Mssrs. Ivins, Rothlein, and Taylor, reviewed Petitioner's allegations of error and injustice on 14 July 1999 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 enclosure (1) was not filed in 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 on 18 July 1949 at age 17. At the time of enlistment he had completed nine years of formal education. During his period of service, he was awarded the Purple Heart, Korean Service Medal, and the Presidential Unit Citation.

d. Petitioner's record reflects that on 28 November 1951, after returning from Korea, he was convicted by a summary court-

martial of an unauthorized absence of 21 days. He was sentenced to confinement at hard labor for 10 days and forfeitures of pay totalling \$60.

e. On 20 November 1952 he received a general discharge by reason of expiration of term of service.

f. In a case such as Petitioner's, character of service was based on conduct and proficiency averages, both of which are computed from marks assigned during periodic evaluations. Petitioner's conduct and proficiency averages were 3.86 and 5.00, respectively. The minimum average marks required for a fully honorable characterization of service at the time of Petitioner's separation were 4.0 in conduct and 5.0 in proficiency.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Messrs. Rothlein and Taylor, concludes that Petitioner's request warrants favorable action. In this regard, the majority believes that his service in Korea, especially the fact that he was wounded in action and received the Purple Heart, mitigates his misconduct to the extent that a fully honorable characterization is warranted despite the substandard conduct average. Based on the foregoing, the majority concludes that the discharge should be changed to honorable.

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 an honorable discharge by reason of expiration of term of service on 20 November 1952 vice the general discharge actually issued on that date.

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 21 July 1997.

MINORITY CONCLUSION:

Mr. Ivins disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. He notes that Petitioner had a summary court-martial for a lengthy period of unauthorized absence. Further, regulations in effect at the time of Petitioner's discharge stated that character of service

would be based on conduct and proficiency averages. Petitioner's marks warrant a general discharge, not an honorable discharge. Accordingly, the minority member concludes that the application be denied.

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

MINORITY RECOMMENDATION:

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



ALAN E. GOLDSMITH
Acting Recorder

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



W. DEAN PFEIFFER

MAJORITY REPORT:
Reviewed and approved:



MINORITY REPORT:
Reviewed and approved:

SEP 17 1999

CHARLES L. TOMPKINS
Deputy Assistant Secretary of the Navy
for Personnel Programs