



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

JRE
Docket No: 6629-99
10 January 2001

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that naval record be corrected to show, in effect, that he was discharged for medical reasons, vice fraudulent enlistment.
2. The Board, consisting of Messrs. Chapman, McCulloch and Zsalmán, reviewed Petitioner's allegations of error and injustice on 4 January 2001 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. Petitioner completed a Standard Form (SF) 93, Report of Medical History, on 24 July 1998, in connection with his pre-enlistment physical examination. He specifically denied that he had ever been a sleepwalker. The report of physical examination was updated on 20 January 1999, and Petitioner denied any significant interval history, and made no amendments to the SF 93. He enlisted in the Marine Corps on 20 January 1999, at age 18. He was noted to sleep walk shortly thereafter, and he disclosed his pre-service history of sleepwalking at that time. He was discharged from the Marine Corps on 11 March 1999 for fraudulent entry, based on his concealment of his history of sleepwalking.
 - c. MARCORPSEPMAN, paragraph 6203.2a, provides for the discharge of Marines for the convenience of the government for a physical condition not a disability, to include sleepwalking. Paragraph 6204.2 a(2) provides, in effect, that a Marine may not be

discharged for erroneous enlistment if the enlistment was the result of fraudulent conduct on the part of the Marine. Paragraph 6204.3b, provides, in part, that entries made in an SF 93 shall not be used as a basis for processing a recruit for discharge due to fraudulent enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's discharge for fraudulent entry was improper because it was based on the SF 93 he completed prior to enlistment, in contravention of the terms of MARCORPSEPMAN paragraph 6204.3b. Accordingly, it finds the existence of an injustice warranting the following corrective action.

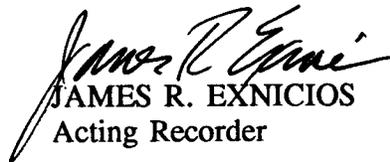
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was discharged from the Marine Corps on 11 March 1999 for the convenience of the government, pursuant to MARCORPSEPMAN paragraph 6203.2a(3), due to sleepwalking, a physical condition not a disability, interfering with his performance of duty.

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

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


JAMES R. EXNICIOS
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.


FOR W. DEAN PFEIFFER
Executive Director