



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

TJR
Docket No: 5864-00
12 March 2001

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

Subj: REVIEW OF NAVAL OF RECORDS [REDACTED]

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

Encl: (1) DD Form 149 with 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 Navy, filed enclosure (1) with this Board requesting that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. Dunn, Kastner, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 6 March 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. 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. Petitioner enlisted in the Navy on 9 November 1947 at age of 17. At the time of Petitioner's enlistment he had completed eight years of formal education.

d. On 17 February 1950 Petitioner's received captain's mast (CM) for absence from his appointed place of duty for a total of 30 minutes. On 24 October 1950 he was convicted by summary court-martial (SCM) of a three day period of unauthorized absence

(UA) and missing the movement of his ship and sentenced to a \$270 forfeiture of pay and a bad conduct discharge (BCD). The BCD was suspended for six months. However, on 26 February 1951, Petitioner received CM for absence from his appointed place of duty for a 15 hour period and the BCD was vacated.

e. On 15 March 1951, approximately six months after Petitioner's 19th birthday, he received a BCD.

f. Petitioner contends that he did not realize the consequences of his misconduct and that his record has been clean since his discharge. A verbal report received from the Federal Bureau of Investigation (FBI) confirms Petitioner's contention of unblemished post-service conduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board's finding is based on Petitioner's youth and immaturity, limited education, good post service conduct as evidenced by a FBI report, and the nature of his misconduct. In this regard, the Board does not condone Petitioner's misconduct. However, the Board notes that his offenses occurred prior to his 19th birthday and concludes that given his obvious immaturity, he may have been unable to fully understand the life-long consequences of his misconduct and a punitive discharge. The Board notes that Petitioner was given a 'second chance' when the BCD was suspended, and that he violated probation by committing an offense. However, the Board also notes the extremely minor nature of this infraction, and questions whether such an offense warranted vacation action. The Board also notes Petitioner's unblemished post-service conduct.

Based on the foregoing, and considering the fact Petitioner has suffered the consequences of a BCD for more than 50 years, the Board concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under other than honorable conditions, and recharacterization to a general discharge is appropriate.

In view of the foregoing, the Board 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 issued a general discharge on 15 March 1951 vice the BCD actually issued on that same day.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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 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.


Robert D. Zsalmam
Joe W. DEAN PFEIFFER
Executive Director