



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

ELP
Docket No. 1818-01
30 November 2001

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
(b) SECNAVINST 1910.4A

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, 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 undesirable discharge issued on 5 May 1948.

2. The Board, consisting of Messrs. Pfeiffer, Brezna, and Swarens reviewed Petitioner's allegations of error and injustice on 28 November 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 Petitioner's application to the Board 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 18 July 1947 for three years at age 18. The record reflects that Petitioner was advanced to seaman second class and his rate was subsequently changed to seaman apprentice. He served without incident until 1 April 1948, when he submitted a statement to the effect that he had engaged in homosexual activities since the age of 14. He

stated that he enlisted thinking he could change his ways, but found that he could not. However, he claimed that he had not committed any homosexual acts since his enlistment. Thereafter, Petitioner agreed to accept an undesirable discharge for the good of the service to escape trial by general court-martial. On 2 April 1948 he was evaluated by a medical officer and was classified a class II homosexual.

d. On 3 April 1948 the commanding officer requested authority to discharge Petitioner as undesirable. A board of officers convened in the Bureau of Naval Personnel on 21 April 1948 and recommended an undesirable discharge. The Chief of Naval Personnel approved the recommendation and directed an undesirable discharge by reason of unfitness. Petitioner was so discharged on 5 May 1948.

e. An entry in the record, made at the time of his discharge, states that the final average of Petitioner's marks was 2.8. However, this appears to be inaccurate since there was only one set of marks entered through 31 December 1947. On that date, he received marks of 4.0 in conduct and 3.5 in proficiency. No other marks are recorded in record to show how a 2.8 average was obtained.

f. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or

(7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

i. Under current standards, an individual separated due to homosexuality normally receives an honorable discharge if there are no aggravating factors, and the overall trait average is satisfactory.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 5 May 1948 the date of Petitioner's discharge, the Board concludes that it would be in the interests of justice to retroactively apply the standards of reference (b) to Petitioner's case. Absent evidence to the contrary, it appears to the Board that Petitioner's only marks were a 4.0 in conduct and a 3.5 in proficiency and the entry to the contrary in the record is erroneous. Accordingly, using the standards of reference (b), the board finds that relief in the form of recharacterization to honorable is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of unfitness on 5 May 1948 vice the undesirable 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 16 February 2001.

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.


for W. DEAN PFEIFFER
Executive Director