



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

ELP
Docket No. 2214-01
22 June 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

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 Navy, applied to this Board requesting, in effect, that his record be corrected to show a more favorable characterization of service, reason for discharge and reenlistment code.

2. The Board, consisting of Ms. Madison and Messrs. Pfeiffer and Silberman reviewed Petitioner's allegations of error and injustice on 20 June 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's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 October 1996 for four years at age 18. He served without incident until

4 November 1998 when he received nonjudicial punishment for failure to obey a lawful regulation by having an unauthorized guest in the bachelor enlisted quarters. Punishment imposed consisted of 30 days of restriction and extra duty.

d. Petitioner served without further incident and was awarded the Navy Achievement Medal for professional achievement as a plane captain and landing signalman on 1 November 1998 during an emergency recovery operation of a helicopter during a replenishment evolution. He was advanced to AD3 (E-4) on 16 September 1999.

e. On 28 April 2000 Petitioner was convicted by summary court-martial of an indecent act with a Japanese female by having sex with her in the presence of other people. He was sentenced to reduction in rate to ADAN (E-3), a forfeiture of \$450, and 60 days of restriction.

f. The following day, Petitioner was notified that administrative discharge processing was being initiated by reason of misconduct due to commission of a serious offense. He was advised of his procedural rights and that the characterization of service could be under other than honorable conditions. You declined to consult with legal counsel or submit a statement in his own behalf, and waived the right to present his case to an administrative discharge board. On 4 May 2000 the commanding officer recommended discharge under other than honorable conditions by reason of misconduct. The discharge authority approved the recommendation and Petitioner was discharged under other honorable conditions by reason of misconduct on 19 May 2000 and assigned an RE-4 reenlistment code. His overall traits average at the time of discharge was 3.22.

g. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct.

h. Petitioner states to the effect that there were 11 individuals allegedly involved in the incident which led to his summary court-martial and discharge. He regrets his actions and the shame they brought to his family. A Federal Bureau of Investigation report obtained by the Board shows no civil convictions subsequent to his discharge.

CONCLUSION:


Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Petitioner's met or exceeded the applicable standards of performance, received the Navy Achievement Medal for outstanding performance during an emergency recovery operation, and was within six months of the expiration of his enlistment when he was discharged for misconduct. While the Board does not condone the misconduct which led to his discharge, the Board believes his overall service does not warrant the life-long stigma of a discharge under other than honorable conditions. The Board concludes that it would be appropriate and just to recharacterize his service to a general discharge under honorable conditions.

However, the Board finds the reason for discharge and the assigned reenlistment code are proper and no changes are warranted.

RECOMMENDATION:

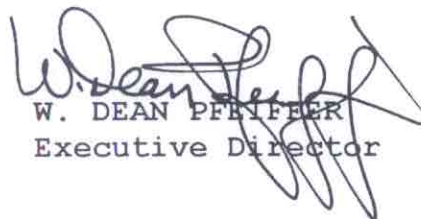
- a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 19 May 2000 vice the discharge under other than honorable conditions actually issued on that date.
 - b. That no further relief be granted.
 - c. That a copy of the Report of Proceedings be filed in Petitioner's naval record.
 - d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 20 Marc 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 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 PFEIFFER
Executive Director