



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

ELP
Docket No: 5081-01
26 December 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 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 Navy, filed enclosure (1) with this Board requesting, in effect, that his record be corrected to show a more favorable type of discharge than the bad conduct discharge issued on 17 December 1948.

2. The Board, consisting of Messrs. Pfeiffer, Whitener and McPartlin, reviewed Petitioner's allegations of error and injustice on 18 December 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 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 2 February 1948 for three years at age 17. At that time, he had nine years of formal education and average test scores. The record reflects that he was advanced to SA (E-2) on 29 April 1948.

d. Petitioner served without incident until 23 July 1948 when he was convicted by general court-martial of two periods of unauthorized absence (UA) totalling 21 days, from 26 June to

transfer orders after the first period of UA. Petitioner was sentenced to confinement at hard labor for nine months, reduction in rate to SR (E-1), total forfeitures, and a bad conduct discharge. On 1 September 1948 the convening authority reduced the confinement and forfeitures to six months. Thereafter, Petitioner waived the right to appear before the clemency and restoration board. On 8 December 1948 the Secretary of the Navy approved the convening authority's action and directed remission of the unexecuted portion of confinement on 17 December 1948, conditioned upon satisfactory conduct. Petitioner received the bad conduct discharge on 17 December 1948.

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 that Petitioner was only 17 years old and had nine years of formal education when he was convicted by general court-martial. Further, the Board does not believe he would have received a general court-martial under current standards for two periods of UA totalling less than 30 days and failure to comply with transfer orders. The Board concludes that a bad conduct discharge was unduly severe for two minor UAs and disobedience of orders and therefore deems it appropriate and just to recharacterize the bad conduct discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that Petitioner was issued a general discharge by reason of misconduct on 17 December 1948 vice the bad conduct discharge actually issued on that date.

b. That 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 25 June 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