



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

JRE
Docket No: 7135-00
16 October 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 his naval record be corrected to show that he was discharged under honorable conditions by reason of physical disability.

2. The Board, consisting of Messrs. Adams, Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 20 September 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 enclosure (1) was not filed in a timely manner, the Board concludes that it would be in the interest of justice to waive the statute of limitations, and consider the application on its merits.

c. Petitioner enlisted in the Navy on 22 August 1989. He received non-judicial punishment on three occasions, for two unauthorized absences of less than four hours duration, disobedience of an order, reporting for duty in a dirty uniform and unshaven, and leaving his place of duty without being properly relieved. On 26 January 1991, his commanding officer advised him that he was being recommended for discharge by reason of unsatisfactory performance and misconduct/pattern of misconduct, with a discharge under honorable conditions. After being advised of his rights in connection with the proposed

separation action, Petitioner waived his right to consult with counsel and to appear before an administrative discharge board. On 19 February 1991, the Commander, Naval Military Personnel Command, directed that Petitioner be discharged by reason of misconduct, with a discharge under other than honorable conditions. Petitioner underwent a pre-separation physical examination on 5 March 1991, and was found qualified for separation. No significant defects were noted by the examining physician, and he concluded that Petitioner's headaches and episodes of syncope were not disqualifying. He was discharged under other than honorable conditions on 8 March 1991.


CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner has failed to submit sufficient relevant evidence to demonstrate that his discharge by reason of misconduct was erroneous, or that he was unfit by reason of physical disability at that time. Accordingly, there is no basis for changing the reason and authority for his discharge. Notwithstanding the foregoing, it concludes that the characterization of his discharge is unjust. In this regard, it notes that the misconduct which resulted in his discharge was not overly serious, and that his commanding officer, who was in the best position to assess his performance and conduct, recommended that he be discharged with a discharge under honorable conditions. After resolving reasonable doubt in Petitioner's favor, the Board concludes that it would be in the interest of justice to grant the following corrective action.


RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was discharged by reason of misconduct on 8 March 1991 with a discharge under honorable conditions, vice the discharge under other than honorable conditions he actually received on that date.
 - b. That so much of Petitioner's application as exceeds the foregoing be denied.
 - c. 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