



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

CRS
Docket No: 7249-01
2 April 2002

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) Woods v. Secretary of Defense, 496 F. Supp 192
(D.D.C., 1980)

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 naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 17 October 1960.

2. The Board, consisting of Messrs. Zsalman, Chapman, and Tew, reviewed Petitioner's allegations of error and injustice on 6 March 2002 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 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 8 June 1956.

d. During his active service, Petitioner's record reflects that he received two nonjudicial punishments. The offenses included failure to obey a lawful order on two occasions.

e. On 4 December 1957 Petitioner was honorably separated from active duty and transferred to the Naval Reserve. While in the Naval Reserve, he did not affiliate with a unit and performed no duties.

f. On 31 May 1960 Petitioner was convicted by civil authorities of robbery and sentenced to confinement for five years.

g. Based on his conviction, Petitioner was processed for an undesirable discharge from the Naval Reserve. The commanding officer recommended that he be discharged for misconduct due to his civil conviction with an undesirable discharge. After review by the discharge authority, the commanding officer's recommendation was approved. Petitioner received an undesirable discharge on 17 October 1960.

h. In 1980, the United States District Court for the District of Columbia decided the case set forth at reference (b). In that case, the court ruled that the armed services could discharge a reservist who was serving in a totally inactive status if the individual was convicted by a civilian court. However, the court also ruled that the member could not receive a discharge under other than honorable conditions. In reaching the latter conclusion, the court cited the rather tenuous bonds between such service members and the armed services, and noted that convictions of these members have little impact on the services. The court concluded that a discharge under other than honorable conditions can only be based on conduct directly affecting the performance of military duties. A general discharge could be issued only if the conduct had an impact on the overall effectiveness of the military, including morale and efficiency. In this regard, the duty of an inactive reservist to maintain availability for call-up in an emergency was held to be an inadequate nexus between civilian misconduct and the military.

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 in this regard is based upon Petitioner's record of service and the holding of reference (b). As he was in a totally inactive status at the time of his civilian conviction, he had a very limited relationship with the Naval Reserve. Therefore, his case falls within the holding of reference (b). Since his service was characterized as honorable on his release from active duty, and since his conduct apparently had no impact on military efficiency, the Board concludes that the characterization of his discharge should also be honorable. However, since the Court agreed that discharge following a civilian conviction was appropriate, the Board further concludes that the reason for discharge should remain misconduct due to

conviction by civil authorities.

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 an honorable discharge by reason of misconduct on 17 October 1960 vice the 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 18 September 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.



for W. DEAN PFEIFFER
Executive Director