



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

ELP:jdh
Docket No: 8031-00
27 February 2001

[REDACTED]

Dear [REDACTED]

A three-member panel of the Board, sitting in executive session considered your application and a majority recommended that your naval record be corrected as set forth in the attached report dated 2 February 2001. In accordance with current regulations, the designated representative of the Assistant Secretary of the Navy for Manpower and Reserve Affairs conducted an independent review of the Board's proceedings and approved the minority recommendation that your application be denied.

You are advised that reconsideration of your case will be granted only upon the presentation of new and material evidence not previously considered by the Board and then, only upon the recommendation of the Board and approval by the Assistant Secretary.

It is regretted that a more favorable reply cannot be made.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



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

ELP

Docket No. 8031-00
2 February 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) Case Summary
(2) 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 naval record be corrected by upgrading the discharge under other than honorable conditions issued on 26 May 1992.

2. The Board, consisting of Messrs. Milner, McPartlin, and Geisler reviewed Petitioner's allegations of error and injustice on 24 January 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 25 September 1990 for four years at age 19. Petitioner was advanced to MMFA (E-2) and served without incident until 25 March 1992 when he received nonjudicial punishment for conspiring with two other Sailors to steal an automobile, and stealing that automobile and a Navy raincoat, the property of an MS3. Punishment imposed consisted of reduction in rate to MMFR (E-1), forfeitures of \$392 per month for two months, and 45 days of restriction and extra duty.

d. On 27 March 1992 Petitioner was notified that he was being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. He was advised of his procedural rights, declined to consult with legal counsel, and waived his right to present his case to an administrative discharge board (ADB). On 20 April 1992 the commanding officer (CO) recommended discharge under other than honorable conditions by reason of misconduct. In his recommendation, the CO stated that Petitioner initially stole a raincoat from the hospital galley. Upon discovering a set of keys and identification tags to a rental vehicle in the pocket of the raincoat, he searched for and located the vehicle in the parking lot. The CO further stated that Petitioner then enlisted the help of two acquaintances and paid one of the individuals \$100 to steal the vehicle, drive it to a shopping center, park it, and return the keys to him. The CO asserted that Petitioner was a thief and had no potential for further service. The Chief of Naval Personnel approved the recommendation for separation and Petitioner was discharged under other than honorable conditions on 26 May 1992.

e. The Naval Discharge Review Board (NDRB) denied Petitioner's request for upgrade of his discharged on 28 April 1997. At that time, Petitioner stated that he bet an individual that he would not take a car. He did not believe the individual would do it and was shocked when he did. He claimed he never touched the car or saw the car again.

f. Petitioner now contends that he did not conspire to steal a car. He claims the two individuals who stole the car stated that he was with them. Petitioner provides a letter from his wife, course completion certificates, and letters attesting to his good character and post-service conduct. A Federal Bureau of Investigation Report indicates he has no post-service convictions.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Messrs. McPartlin and Geisler, conclude that Petitioner's request warrants favorable action. In this regard, the majority notes Petitioner youth and immaturity, the issues he presented to the NDRB, and his good post-service conduct since discharge. The majority does not condone the misconduct which led to Petitioner's discharge. However, the majority believes his immaturity played a key role in this sole incident of misconduct in more than 20 months of service, and it does not warrant the life-long stigma of a discharge under other than honorable conditions. Accordingly, the majority concludes that it would be appropriate and just to recharacterize his discharge under other than honorable conditions to a general discharge under honorable conditions.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 26 May 1992 by reason of misconduct due to commission of a serious offense vice the other than honorable discharge issued on that date.

b. 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 29 August 2000.

MINORITY CONCLUSION:

Mr. Milner disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. In this regard, the minority member initially notes the seriousness of the offenses and believes that Petitioner's misconduct fully warranted a discharge under other than honorable conditions. Further, the NJP evidence that was considered in this case no longer exists, so the Board has no way of confirming or refuting Petitioner's version of events. The minority also notes the inconsistency in Petitioner's statements to this Board and the one he made to the NDRB.

In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

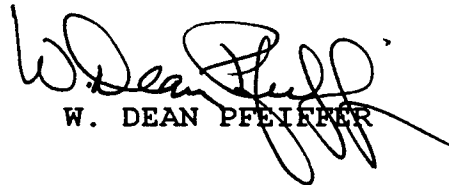
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

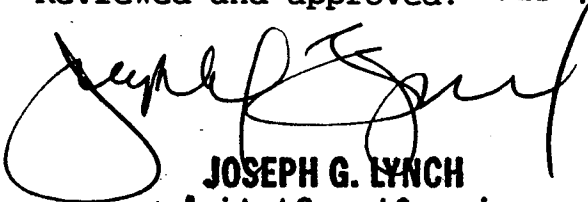
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

~~MAJORITY REPORT:~~
~~Reviewed and approved:~~

MINORITY REPORT:
Reviewed and approved: FEB 16 2001



JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)