



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

TRG
Docket No: 8100-01
19 April 2002

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 Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show a better characterization of service than the bad conduct discharge issued on 21 October 1944.

2. The Board, consisting of Mr. Beckett, Mr. Leeman and Mr. Taylor, reviewed Petitioner's allegations of error and injustice on 16 April 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 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 Naval Reserve on 3 July 1943 at age 18 and reported for active duty on 10 July 1943. On 3 October 1943 he reported for duty at the Naval Magazine, Port Chicago, CA. On 20 June 1944 he received nonjudicial punishment for destruction of government property. A general court-martial convened on 25 July 1944 and convicted him of the unauthorized use of another individual's automobile (a 1935 Ford). The court sentenced him to reduction to apprentice seaman, forfeiture of all pay and allowances, confinement at hard labor for two months

and a bad conduct discharge. The discharge was suspended for a probationary period of six months and he was restored to duty on 13 September 1944. His probation was revoked on 11 October 1944 when he received nonjudicial punishment for possession of another man's blanket. The bad conduct discharge was issued on 21 October 1944.

d. Petitioner states in his application that his discharge should be upgraded because the discharges of other black Sailors stationed at the Naval Magazine, Port Chicago, CA have been upgraded. He implies that racism was a factor in his case.

e. The Board is aware that a large number of black Sailors were convicted by general court-martial of mutiny, after refusing to perform hazardous duty because of dangerous conditions, following the explosion of an ammunition ship at Port Chicago. However, most of the Sailors ultimately received general discharges because the bad conduct discharges were suspended on probation. They did not receive bad conduct discharges unless they got into further trouble. There has been no blanket upgrade of the general discharges.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that, although the details of the offense are unavailable, it appears that referring a charge of unauthorized use of a nine year old automobile to a general court-martial was excessive and that a summary court-martial would have been more appropriate. The Board also believes that, in retrospect, it was unduly severe to terminate Petitioner's probation for the very minor offense of possession of another man's blanket. Whether or not there was a racial component in the actions taken against Petitioner cannot be ascertained from the record. In any case, the Board concludes that the bad conduct discharge should now be recharacterized to general as a matter of clemency.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 21 October 1944 he was issued a general discharge by reason of misconduct vice the bad conduct discharge now of record.

b. That this Report of Proceedings be filed in Petitioner's naval record.

c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board

request that Petitioner's application was received by the Board on 22 October 2001.

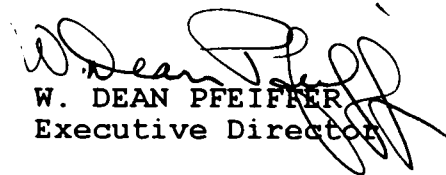
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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