



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

FC
Docket No: 09911-02
21 April 2003

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) DODDIR 1332.14
(c) SENAVINST 1910.4A
(d) MILPERSMAN

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, applied to this Board requesting, in effect, recharacterization of his discharge under other than honorable conditions.

2. The Board, consisting of Mr. Morgan, Mr. Pfeiffer, and Mr. Dunne reviewed Petitioner's allegations of error and injustice on 9 and 14 April 2003 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. Petitioner enlisted in the Navy on 31 July 1978 at age 18. He served well and was honorably discharged on 30 July 1981 for the purpose of immediate reenlistment. On 31 July 1981 he reenlisted in the Navy.

c. Petitioner then served without incident until 14 May 1983, when he was apprehended by civil authorities and charged with drunk driving. On 21 May 1983, he was convicted and

sentenced to 113 days in confinement. On 13 August 1983, he was returned to military authorities.

d. On 17 August 1983 was advised that administrative separation was being initiated by reason of misconduct due to a commission of a serious offense and alcohol rehabilitation failure. On that same day, he was advised of his procedural rights, and elected the right to obtain copies of documents forwarded to the separation authority supporting the basis for the proposed separation and the right to be represented by counsel at an administrative discharge board (ADB).

e. On 23 September 1983, he received nonjudicial punishment (NJP) for disrespect, disobedience, and being drunk on duty, and was awarded forfeitures of pay, extra duty, and a suspended reduction to paygrade E-4. On 8 November 1983, he commenced a period of unauthorized absence and was declared a deserter on 8 December 1983.

f. On 23 February 1984, an ADB recommended that Petitioner be separated with a general discharge. On 28 March 1984, the commanding officer recommended discharge under other than honorable conditions vice the general discharge recommended by the ADB.

g. On 27 March 1984, Petitioner returned to military control. However, on 2 April 1984 he again became an unauthorized absentee and on 10 April 1984, the Commander, Naval Military Personnel Command (CNMPC) directed an other than honorable discharge in absentia. He was so discharged on 16 April 1984.

h. Applicable provisions of references (c) and (d) stated that a separation authority could not approve a less favorable characterization than that recommended by an ADB.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board concluded that Petitioner was correctly processed for administrative separation by reason of misconduct. However, since applicable regulations require that the discharge directed be no less than what the ADB recommended, it was improper for CNMPC to direct an other than honorable discharge after the ADB recommended a general discharge. Therefore, the Board believes that recharacterization is warranted.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 16 April 1984 vice the other than honorable discharge actually issued on that date.

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

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 20 November 2002.


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