



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

BAN
Docket No: 01355-08
7 October 2008

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) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his bad conduct discharge (BCD) be upgraded.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 September 2008 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 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 16 April 1987 at the age of 18. He then served for two years and three months without incident. However, in January 1989, Petitioner was convicted at a special court-martial (SPCM) for wrongful appropriation in excess of \$100.00. Petitioner received confinement for three

months, forfeiture of one-half one months pay for three months, and a BCD. Petitioner claims that he returned the property to its rightful owner with everything intact. On 30 October 1989, Petitioner was separated with a BCD by reason of conviction at a SPCM and was assigned an RE-4 reenlistment code.

d. Petitioner submitted numerous character references attesting to his good character for the past 20 years.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board's conclusion is based on the belief that Petitioner's punishment was disproportionate to the offense. The Board takes into consideration that although Petitioner did commit the offense in January 1989, which resulted in a special court-martial, he had previously returned the wrongfully appropriated item to its rightful owner. In addition, Petitioner admitted that what he did was wrong and regrets his actions. The Board notes he was young and immature and did not fully appreciate the consequences of his actions. Petitioner also submitted personal references that affirms his character for the past twenty years. Based on the foregoing, the Board concludes that the interests of justice would be better served in his re-characterization to a general discharge. Accordingly, the Board concludes that relief in the form of a re-characterization of Petitioner's discharge is appropriate.

In view of the foregoing, the board finds the existence of an injustice warranting the following corrective actions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge on 30 October 1989 vice the BCD issued on the same day.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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


BRIAN J. GEORGE
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 Regulation, 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