



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

BAN
Docket No: 02673-09
1 March 2010

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 characterization of service be upgraded from undesirable to honorable.

2. The Board, consisting of Messrs. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 December 2009 and, pursuant to its regulations, determined that the limited 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 12 May 1952, and served without disciplinary incident until 24 May 1954, when he was convicted at a special court-martial (SPCM) for larceny. It appears that he merely took a lighter that he found on the floor. He was found guilty of willfully or intentionally stealing the lighter from another Sailor. Therefore, on 24 August 1954, he was separated with an undesirable discharge due to the good of

the service.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Although he was found guilty at a SPCM for larceny, the Board feels that the records of his court-martial revealed that he took a lighter he found on the floor. Although he should have turned the lighter in to the master-at-arms, he did not willfully or intentionally steal the lighter from a fellow shipmate. The Board also notes that his record prior to the conviction was outstanding and he had never received any other disciplinary actions for misconduct. Therefore, the Board concludes that his characterization of separation should be upgraded from undesirable to general. In view of the above, the Board recommends the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge vice the undesirable discharge on 24 August 1954 now of record.

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.

d. That no further relief be granted.

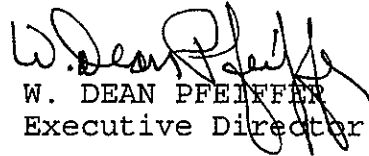
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceeding 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