



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

TAL  
Docket No: 5389-10  
11 February 2011

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] FRANCIS P. RILEY, USN  
[REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) SECNAVINST 1910.4B

Encl: (1) DD Form 149 dtd 5 Oct 10 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 other than honorable (OTH) discharge be upgraded.

2. The Board, consisting of Mr. Geberth, Mr. Hotopp, and Mr. Sproul, reviewed Petitioner's allegations of error and injustice on 9 February 2011 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 reenlisted in the Navy on 3 November 1950 after more than eight years of honorable service. During his enlistment, he received nonjudicial punishment (NJP) on one occasion for disobeying a lawful order.

d. On 5 January 1954, while undergoing a security check, Petitioner made a voluntary statement to Navy Investigative Service (NIS) in which he admitted to participating in homosexual

acts both while he was a civilian and during his last enlistment.

e. Petitioner admitted to being arrested in Los Angeles, California, after he was discharged in 1946 for participating in a homosexual act with a civilian and was sentenced to 30 days in jail. He further admitted to participating in two other homosexual acts with civilians during the current his last enlistment period. He stated at the time of each of the homosexual acts he had been drinking heavily.

f. Subsequently, a charge of sodomy was preferred against Petitioner. On 24 February 1954, he submitted a written request for an undesirable discharge for the good of the service in lieu of trial by court-martial. The discharge authority approved and directed an undesirable discharge due to unfitness. On 24 March 1954 he was so separated. At the time of his separation, his conduct marks were high enough, under normal circumstances, to warrant a general characterization of service.

g. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with naval service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under other than honorable conditions unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action based upon his overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 24 March 1954, the date of his discharge. The Board believes it would be in the interest of justice to retroactively apply the standards of reference (b) to his case. Using the standards of reference (b), the Board finds that relief in the form of recharacterization is appropriate. The Board further concludes that a general discharge is warranted in this case given his conduct mark average and record of one NJP.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 24 March 1954 vice the OTH discharge actually issued on that date.

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.

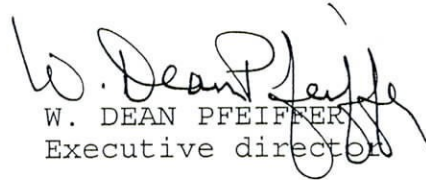
d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 14 May 2010.

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 deliberation, 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 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