



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

TJR
Docket No: 9868-10
24 June 2011

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

Subj: [REDACTED]

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

Encl: (1) Case summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed an application with this Board requesting that the characterization of his undesirable discharge be changed.
2. The Board, consisting of Messrs. Bougeois, McBride, and Midboe, reviewed Petitioner's allegations of error and injustice on 21 June 2011 and, pursuant to its regulations, a majority 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 31 August 1961 at age 21. He served for nearly two years without disciplinary incident, but on 10 June 1963, he received nonjudicial punishment (NJP) for sleeping on watch. He also received NJP on 7 October 1963 for not having made his bunk.
 - d. On 20 September 1963 Petitioner underwent a medical evaluation. During this evaluation, he was interviewed regarding his suspected participation in homosexual activities. As a

result, he admitted to participating in two passive homosexual acts, both while intoxicated. The medical evaluator also noted that he showed his concern regarding his alcohol abuse. He was subsequently diagnosed with an inadequate personality disorder and overt homosexuality.

e. Subsequently, Petitioner was administratively processed for separation by reason of unfitness based on his misconduct, as evidenced by the two NJPs and his homosexual behavior. Although he waived his procedural rights to consult with legal counsel and to present his case to an administrative discharge board, on 11 October 1963, an enlisted performance evaluation board recommended an undesirable discharge by reason of unfitness. His commanding officer also recommended he be issued an undesirable discharge by reason of unfitness based on his misconduct and the findings of the medical evaluation. On 14 October 1963 the discharge authority directed an undesirable discharge by reason of unfitness, and on 25 October 1963, Petitioner was so discharged.

f. 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 conditions other than honorable 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.

h. In accordance with the foregoing policy, the record fails to reflect the presence of any aggravating factors.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Messrs. Bourgeois and Midboe, concludes that Petitioner's request warrants favorable action.

In reaching its conclusion, the majority initially notes Petitioner's overall period of satisfactory service. The majority also notes his misconduct that resulted in two NJPs, but deems it to be minor in nature. The majority further notes that his participation in homosexual acts only occurred while he was under the influence of alcohol and that his record did not reflect any aggravating factors as set forth in current Navy policies.

Based on the foregoing, and since Petitioner has suffered the consequences of an undesirable discharge for more than 48 years, the majority concludes that no useful purpose is served by continuing to characterize his service as having been under other than honorable conditions, and relief in the form of a general discharge is appropriate.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 25 October 1963 vice the undesirable discharge actually issued on that same day.

b. That a copy of this Report of Proceedings 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 10 September 2010.

MINORITY CONCLUSION:

Mr. McBride disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member notes that Petitioner's misconduct, although minor in nature, and his repeated participation in homosexual acts, although not aggravating under current standards, are not indicative of honorable service or him having served under

honorable conditions. The minority member believes that his misconduct and unfitness supported an undesirable discharge, and since it was proper at the time, he should not be permitted to change it now.


In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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.

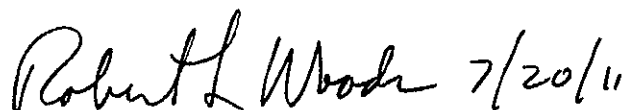
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

MAJORITY REPORT APPROVED:


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~~MINORITY REPORT APPROVED:~~