



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

JRE
Docket No. 10018-09
25 October 2010

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

Subj: FORMER [REDACTED] USN, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NPC memorandum 5420 PERS-312A/06, 17 Aug 10
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show his "service in country at Cam Rahn [sic] Bay, Vietnam during the period July-68-Dec-68".

2. The Board, consisting of Mses. [REDACTED] and [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 October 2010 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 the application was not timely filed, the Board finds it to be in the interest of justice to waive the statute of limitations and consider the application on the merits.

c. Petitioner enlisted in the Navy on 14 February 1967. He served primarily in P-3 squadrons as a P-3 systems organizational maintenance technician. He reported to Patrol Squadron Twenty-Two (VP-22), Naval Air Station (NAS), Barber's Point, Hawaii, on 22

November 1967, and remained assigned to that squadron until transferred on 17 December 1970. VP-22 deployed to Naha, Okinawa, Japan on 30 June 1968, and a detachment of VP-22 was supported at Cam Ranh Bay, Vietnam. During June 1971, Petitioner was awarded the Air Medal (First Strike Flight Award) for successfully completing two hundred fifty flight hours in direct combat support operations against the enemy in an active combat area of Southeast Asia from 15 June 1968 to 15 January 1969 and 15 November 1969 to 30 April 1970. In addition, he was awarded the Vietnam Service Medal and the Vietnam Campaign Medal. Each of these decorations could be awarded for service in or in support of operations in Vietnam, and there was no requirement that the recipient be physically present on the ground in Vietnam or its inland waters in order to qualify for an award. Petitioner was honorably discharged on 1 December 1970 and reenlisted the following day. He remained on active duty until 1 September 1974, when he was honorably discharged.

d. In correspondence attached as enclosure (2), the Board was advised by direction of the Commander, Navy Personnel Command, that "review of Petitioner's service and medical records failed to document service "in-country" [in Vietnam]; "Unfortunately, the unofficial photos and statements by other personnel contained in enclosure (1) are not considered appropriate documents that would authorize entries of this nature to be made in an official Navy Record"; and "Regrettably, it is our opinion that the petition be denied".

e. For the purpose of determining entitlement to certain VA benefits, it is presumed that a veteran who served in Vietnam during the Vietnam era was exposed to a herbicidal agent. The term service in Vietnam includes service in Vietnam and/or its inland waterways, as well service involving visitation to Vietnam. No minimum period of service in Vietnam is required to trigger the application of the presumption. Diabetes mellitus type II is one of the conditions presumptively linked to exposure to herbicidal agents.

f. Petitioner contends, in effect, that he applied for service connection for diabetes mellitus, type II, which is linked to his presumed exposure to herbicides in Vietnam. The Department of Veterans Affairs (VA) denied his request because entries in his service record do not establish that he served in Vietnam. He obtained statements from three persons with whom he claims he served or had contact while in Vietnam. Two of the statements are to the effect that their authors had "contact" with Petitioner in Cam Ranh Bay in 1968 and/or 1969. The third is to the effect that its author and Petitioner served together in VP-22 in Cam Ranh Bay in 1968, and that they were "in and out of country" (Cam Ranh) for approximately six

months in 1968. Petitioner also obtained copies of photographs of himself he states were taken in Vietnam, as well as several photographs of Cam Ranh Bay that were posted on "Yahoo/flickr" and provide partial corroboration of his contentions. The statements and photographs are filed in enclosure (1).

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (2), Ms. Trucco and Mr. Spooner believe Petitioner's contention that he served on the ground in Vietnam for some period of time during the July-December 1968 period. Accordingly, they find the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he served the ground in Cam Ranh Bay, Vietnam, for one or more days during the period from July to December 1968 while serving on active duty in the Navy.

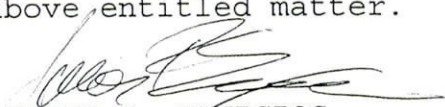
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION:

Upon review and consideration of all of the evidence of record, Mr. Guill concludes that Petitioner has failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice in his naval record. In this regard, she substantially concurs with the comments and recommendation contained in enclosure (2). Accordingly, Ms. Guill recommends that Petitioner's request for correction of his record be denied.

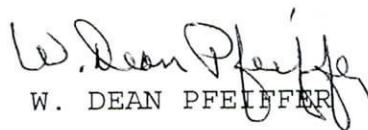
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

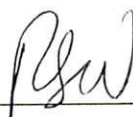
ROBERT D. ZSALMAN
Recorder



JAMES R. EXNICIOS
Acting Recorder

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


W. DEAN PFEIFFER

Approved majority recommendation 

Approved minority recommendation _____

 11/4/10

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000