



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TAL
Docket No: 728-12
1 November 2012

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 member of the Navy, filed enclosure (1) with this Board requesting that derogatory material be removed from his official military personal file, a Certificate of Release or Discharge from Active Duty (DD Form 214) which was issued in error.

2. The Board consisting of Messrs. Zsalman, Exnicios, and Ms. Guill, reviewed Petitioner's allegations of error and injustice on 24 October 2012 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 24 April 1990 at the age of 25. Petitioner received nonjudicial punishment (NJP) on

four occasions for using provoking speech toward medical staff, two instances of drunk and disorderly conduct, wrongful use of a controlled substance, five instances of insubordinate conduct, making a threat and failure to obey a lawful order. On 14 September 1992, he was convicted by special court-martial (SPCM) of two instances of unauthorized absence (UA) from his unit for a period totaling 17 days, missing ship's movement and breaking restriction. The sentence imposed was confinement, a forfeiture of pay, reduction in paygrade and a bad conduct discharge (BCD).

d. On 10 December 1992, Petitioner was placed on appellate leave pending final review of his case. At that time a DD Form 214 was issued with a separation date of 10 December 1992. His final discharge date after appellate review was 13 October 1993. He was issued a second DD Form 214 with a correct separation date of 13 October 1993.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board's decision is based on the fact that there are two DD 214's in his record, one separation date of 10 December 1992, the date he was put on appellate leave, and the other separation date of 13 October 1993, the date of the completed appellate review.

Based on the foregoing, the Board concludes that no useful purpose is served by continuing to maintain an incorrect document in Petitioner's official service record. As such, the Board concludes that the DD Form 214 with the 10 December 1992 separation date should be removed.

In view of the foregoing, the Board finds the existence of an error warranting the following corrective action.


RECOMMENDATION:

a. That Petitioner's naval record be corrected by the removal of the DD Form 214 with a separation date of 10 December 1992.

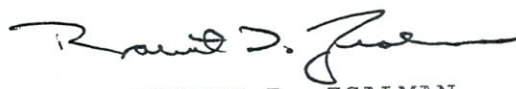
b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

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 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.


ROBERT D. ZSALMAN
Acting Executive Director