



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

BAN
Docket No: 01420-12
29 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) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former seaman apprentice of the Navy, filed enclosure (1) with this Board requesting an upgrade to his other than honorable (OTH) characterization of service issued on 9 October 1992.
2. The Board, consisting of Mr. Zsalman, Mr. Storz, and Ms. Countryman, reviewed Petitioner's allegations of error and injustice on 29 November 2012 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. Although 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 entered active duty in the Navy on 20 August 1990, and served without any disciplinary incident until 7 August 1992, when he received nonjudicial punishment for failing to obey a lawful order by inhaling the contents of an aerosol can.

d. He was recommended for separation with an OTH discharge. On 9 October 1992, the separation was approved and he was separated with an OTH due to misconduct and an RE-4 reentry code. His overall trait average was 3.3.

e. Petitioner submitted an application to the Board requesting an upgrade to his OTH discharge due to the fact that it was one isolated incident and his post exemplary service conduct.

CONCLUSION:

The Board does not condone his action of inhaling an aerosol can, a potentially life threatening act. However it was the contents of an isolated event in an otherwise good career, with a overall trait average of 3.3, which was sufficiently high to warrant a general discharge.

Therefore, upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief.

RECOMMENDATION:


a. That Petitioner's naval record be corrected to show that on 9 October 1992, he received a general characterization of service under honorable conditions vice the OTH discharge now of record.

b. That no further relief be granted.

c. That this Report of Proceedings be filed in the 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.



BRIAN J. GEORGE
Head, Discharge Section