



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 9561-96

22 June 1999

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) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, submitted an application to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the other than honorable discharge issued on 15 July 1992.

2. The Board, consisting of Messrs Bartlett, Swarens, and Taylor reviewed Petitioner's allegations of error and injustice on 3 June 1999 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 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 7 October 1991 at age 19. At the time of enlistment he had completed twelve years of formal education.

d. Petitioner's record reflects that he received four nonjudicial punishments. The offenses included absence from his appointed place of duty on five occasions, willful disobedience of a lawful order, failure to obey a lawful order on two

occasions, soliciting another Sailor to smoke crack cocaine, underage drinking, possession of drug paraphenalia, breaking restriction, and being incapacitated for duty.

e. On 19 May 1992 the commanding officer recommended that Petitioner be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense. After review by the discharge authority, the recommendation for separation was approved and he was discharged with an other than honorable discharge on 15 July 1992.

f. On 19 October 1992, only four months after his discharge, Petitioner was hospitalized due to a bipolar disorder. Subsequently, he was placed on medication and referred for psychotherapy. In 1993, a psychologist opined that the misconduct which resulted in discharge "was the result of an undiagnosed and untreated bipolar disorder, not willful misconduct." At that time, the command master chief from Petitioner's former command submitted a letter which documented Petitioner's bizarre behavior at that command.

g. On 19 November 1993 the Department of Veterans Affairs (VA) found that Petitioner was not insane at any time during his period of service. The VA found that there was no indication of insanity or that he was incapable of understanding communications or was unaware of his status. Information from Petitioner's parents indicated that he had attended college during the summer of 1992 with no significant problem indicated.

h. In an advisory opinion of 9 June 1998, the Specialty Advisor to the Surgeon General for Psychiatry notes that Petitioner received psychiatric medicine in high school but failed to report this at the time of enlistment. Additionally, he was seen by two psychologists during his period of service. The opinion goes on to note that when hospitalized after his discharge "the chart was replete with evidence of a manic psychosis", Petitioner reported excessive use of drugs. At that time, his mother indicated that he smoked marijuana and may have used other drugs, but a urinalysis was negative. The advisory opinion then states as follows:

This case is not easy because of the possibility that substance abuse played a role in (Petitioner's) problems in the service. Also, the examining psychologists (in the Navy) did not perceive him to be seriously ill. Nonetheless, if one reads between the lines, it seems likely that he had Bipolar Disorder while in the Service and that it caused the claimants disciplinary problems. The following evidence supports this opinion: 1) (The

command master chief) viewed the claimant as unable, not unwilling, to follow simple instructions, even dressing himself correctly. These observations of a seasoned non-commissioned officer indicate that misconduct was due to mental illness rather than willful behavior. 2) The presence of severe sleep disturbance, while seen with caffeine abuse, is a classic symptom of Bipolar Disorder. 3) (Petitioner) was hallucinating while on active duty. Seeing people as "pieces of meat" would be consistent with a psychotic illness such as Bipolar Disorder. 4) (Petitioner) did not have a history of serious antisocial behavior prior to entering the service. A sudden, severe change in behavior is consistent with a serious mental illness such as Bipolar Disorder. 5) (Petitioner) was manic and grossly psychotic within months of leaving the service. At that time his drug screen was negative, indicating he most likely had a primary psychotic illness rather than a drug induced one. For this reason, although one cannot be absolutely certain, it is less likely that the psychotic symptoms (hallucinations) he experienced in the military were the result of drugs.

i. Through counsel, Petitioner argues that at the time of enlistment he was suffering from an undiagnosed condition known as manic depression and his ability to function in a military environment was significantly impaired during his abbreviated tour of active duty. Submitted with Petitioner's application is an affidavit from a certified psychiatrist which states that the manic depressive illness created impaired judgment and periods during which Petitioner would have been unable to distinguish right from wrong. The psychiatrist argues that absent this illness, he would not have engaged in acts of misconduct.

#### MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record the majority, consisting of Messrs. Bartlett and Swarens, note that Petitioner's request warrants favorable action. In this regard, they concur with the advisory opinion at least to the extent that Petitioner's bipolar disorder seriously extenuated and mitigated his misconduct and a discharge under other than honorable conditions is not warranted. Based on all of the foregoing, the majority concludes that the discharge should be recharacterized to general.

In view of the foregoing, the Board 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 by reason of misconduct on 15 July 1992 vice the other than honorable discharge actually issued on that date.

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

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 5 December 1996.

**MINORITY CONCLUSION:**

Mr. Taylor disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. He notes that Petitioner knew that he had mental problems prior to enlistment but did not report it. Further, while there is evidence that Petitioner had a problem adapting to the military in view of his four nonjudicial punishments, the minority member does not believe that his mental illness caused him to commit the serious offenses of soliciting another individual to use crack cocaine, or possessing drug paraphernalia. In this regard, the minority member notes the evaluation of the VA which stated that he was not insane. Accordingly, the minority member concludes that the application be denied.

**MINORITY RECOMMENDATION:**

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



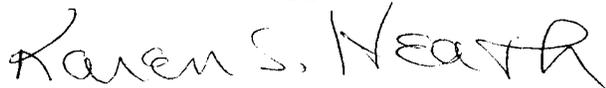
ALAN E. GOLDSMITH  
Acting Recorder

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

  
W. DEAN PFEIFFER

MAJORITY REPORT

Reviewed and approved: AUG 6 1999



KAREN S. HEATH  
Principal Deputy Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)

~~MINORITY REPORT~~  
~~Reviewed and approved:~~