



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 2461-99

26 August 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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with 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 14 September 1995.

2. The Board, consisting of Mr. Pfeiffer, Ms. Madison, and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 10 August 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 for four years on 2 March 1992 at age 19. At that time he had completed twelve years of formal education. After enlisting, he served for about 30 months with no disciplinary infractions and was advanced in rate to AEAN (E-3). He was also diagnosed with a personality disorder.

d. The court memoranda (page 7's) in the record reflect that Petitioner then received two nonjudicial punishments (NJP). On

26 August 1994 he was punished for an 11 day period of unauthorized absence (UA). On 24 July 1995 he received a second NJP for a seven day period of UA, absence from his appointed place of duty, and disobedience of a lawful order.

e. On 8 August 1995, after Petitioner was advised of administrative separation action and waived his right to an administrative discharge board, the commanding officer (CO) recommended that he be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense based on the above 24 July 1995 NJP. However, in the message recommendation, he stated that the 24 July 1995 NJP had been imposed for the offense of driving under the influence (DUI). The recommendation did not mention the two absence offenses and the instance of disobedience set forth on the court memorandum of that date.

f. Subsequently, the discharge authority approved the recommendation and directed that an other than honorable discharge be issued by reason of misconduct. Petitioner was so discharged on 14 September 1995 after about 42 months of service. At that time, his conduct and overall traits averages were both 3.75.

g. Petitioner's case was reviewed by the Naval Discharge Review Board (NDRB) in 1998. In its decisional document denying his application for recharacterization, NDRB noted the substitution of the DUI for the offenses of record and stated "Suspect this is listed in error."

h. Petitioner argues that the 24 July 1995 NJP mentioned in the CO's recommendation never occurred and, therefore, he should not have been discharged with an other than honorable discharge by reason of commission of a serious offense since the discharge was based on an offense which he did not commit and for which NJP was never imposed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board first notes that Petitioner served for more than two years without incident and over 42 months of a four-year enlistment. Further, the Board believes that his infractions were relatively minor in nature. Along these lines, the Board agrees with NDRB that no NJP for DUI was ever imposed. The Board does not believe that the other documented offenses of record warranted the severe characterization that he received, given his length of service, excellent conduct and overall traits averages, and the mitigating factor of the diagnosed personality disorder. However, the Board also believes that Petitioner was processed for separation based

on the two confirmed NJP's and notes that the second disciplinary action imposed punishment for disobedience, a serious offense. Taking all of the foregoing into consideration, the Board 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.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 14 September 1995 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 14 April 1999.

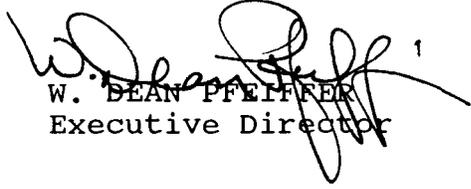
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. 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 Regulations, 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.



W. DEAN PFEIFFER
Executive Director