



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6976-97

21 October 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],  
[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, the widow of a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that Subject's naval record be corrected to show a more favorable type of discharge than the bad conduct discharged issued on 22 June 1951.

2. The Board, consisting of Mr. Pfeiffer, Mr. Leeman, and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 20 October 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 Petitioner's application to the Board 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. Subject enlisted in the Navy on 1 July 1948 for three years at age 18. At the time of his enlistment, he had

completed only seven years of formal education and attained test scores which placed him in mental group IV.

d. Subject's record reflects that he was advanced to TN (E-3) and served without incident until 6 December 1950 when he was convicted by summary court-martial of entering a locker assigned to another Sailor; stealing a tailor-made dress blue uniform valued at \$30 and a padlock and key valued at \$1.00; and possession of a tailor-made dress blue jumper belonging to another Sailor. Subject was sentenced to forfeitures of \$30 per month for a period of three months and a bad conduct discharge. On 21 May 1951, the Secretary of the Navy set aside the finding of guilty to the specification of entering a locker assigned to another Sailor. Thereafter, the Chief of Naval Personnel directed execution of the bad conduct discharge and he was so discharged on 22 June 1951.

e. At the time of Subject's discharge, Navy policy required the separation of individuals who stole from their shipmates.

f. On 31 January 1952, the Board of Review, Discharge and Dismissals advised Subject that he could request a review of his court-martial under section 12 of Public Law 506, 81st Congress, and a new trial could be ordered if it appeared to the Judge Advocate General that there was good cause. There is no evidence that he requested such a review.

g. Petitioner contends that her husband did not and could not have stolen the tailor-made uniform because on the day the incident occurred, it was a Saturday and he was on liberty for the weekend. She stated that when he returned to the ship, the uniform in question was found in his locker. She alleges that the uniform belonged to a white sailor and was most probably moved to her husband's locker in order to create a racial incident. She asserts that in those days, African-American Sailors were always assumed to be guilty.

h. The Federal Bureau of Investigation has reported that Petitioner has no record of arrests or convictions with that agency.

#### 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 initially notes that although Petitioner now contends that her husband was innocent of theft, no evidence has been presented, or is contained in the record, to support that assertion. However, the Board is also aware of Subject's youth and immaturity, limited formal education, low test scores, and his good post-service conduct. The Board notes that theft was an offense for which there was no tolerance in the Navy and individuals convicted of such an offense were routinely discharged. However, the Board notes that Subject's theft was relatively minor and was his only offense in a three year enlistment which he nearly completed. Given his unblemished post-service record, it apparently was an aberration. The Board believes that the bad conduct discharge for this single offense was unduly harsh. Accordingly, the Board believes that Petitioner's service does not now warrant the stigma of a bad conduct discharge and to continue to so stigmatize his service is unjust and serves no useful purpose. The Board concluded that it would be appropriate and just to recharacterize the bad conduct discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 22 June 1951 vice the bad conduct discharge actually issued on that date. This should include the issuance of a new DD Form 214.

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

d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 15 September 1997.

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