



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5471-99

3 November 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 1910.4A

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 a better characterization of service than the undesirable discharge issued on 16 August 1965.

2. The Board, consisting of Mr. Brezna, Mr. Dunn and Mr. Taylor, reviewed Petitioner's allegations of error and injustice on 2 November 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 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 30 November 1964 at age 18. At that time he had completed 11 years of education and attained a GCT score of 66, which placed him in Mental Group I.

d. On 12 May 1965 he made a statement admitting to participation in homosexual acts. Based on his admission he was processed for an administrative discharge. In connection with this processing he elected to waive his right to have his case heard by an administrative discharge board. On 10 August 1965 the discharge authority approved the recommendation of the commanding officer that he be discharged for unfitness with an

undesirable discharge. He was so discharged on 16 August 1965.

e. Reference (b) sets forth the Department of the Navy's current policies, standards and procedures for administratively separating enlisted servicemembers. With regard to homosexuality, reference (b) declares such behavior to be incompatible with naval service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those servicemembers who commit a homosexual act or acts. If separated, the servicemember's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the findings that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

f. Petitioner's military records failed to disclose the presence of any of the aggravating circumstances which would warrant the issuance of an other than honorable discharge under the provisions of reference (b).

CONCLUSION:

Upon review and consideration of all the evidence of record the Board now finds the existence of an injustice warranting corrective action. Based upon Petitioner's overall record of service and current Department of the Navy policy as established by reference (b) and its radical departure from the policy which was in effect on 16 August 1965 the date of Petitioner's discharge, the Board concludes that it would be in the interest of justice to retroactively apply the standards of reference (b) to Petitioner's case. Using the standards of reference (b), the

Board finds that relief in the form of recharacterization is appropriate. Petitioner was never evaluated in his short period of service, however, he satisfactorily completed training and was not the subject of any disciplinary infractions. Therefore, the Board concludes that an honorable discharge is warranted in this case.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 16 August 1965 he was issued an honorable discharge by reason of unfitness vice the undesirable discharge actually issued on that date.

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

c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 11 August 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