



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6214-99

18 February 2000

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 applied to this Board requesting, in effect, that her naval record be corrected to show a more favorable type of discharge than the discharge under other than honorable conditions issued on 8 November 1982.

2. The Board, consisting of Messrs. Morgan, Rothlein, and Chapman reviewed Petitioner's allegations of error and injustice on 16 February 2000, 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. Petitioner enlisted in the Navy on 4 January 1982 for four years. She completed recruit training and was assigned to the fleet.

d. Petitioner served without incident until 21 April 1982 when she was referred to the ship's clinic for an interview by the medical officer after she reported taking medication for nerves. The medical record indicated that she seemed anxious and her speech was fast. She also reported taking nerve pills since the seventh grade. It was noted that she had requested information through the division about procedures for a hardship discharge due to her mother's illness. The medical officer noted that according to Petitioner, both of her parents had complicated medical problems and her mother's health in particular was declining. A 17 year old sister and a 12 year old brother were the only ones at home to take care of the parents. Petitioner was worried and depressed over the situation.

e. On 29 April 1982, Petitioner was referred to the psychiatry clinic since she had become a discipline problem, demonstrating immature behavior and a poor adjustment to the Navy and shipboard life. She underwent an outpatient psychiatric consultation on 3 June 1982. The consultation report noted Petitioner had minimal insight and her judgment was poor. She acknowledged suicidal ideation, but denied any intent. She was not motivated for continued sea duty. It was noted that while aboard ship she had suffered numerous minor injuries and twice attempted to jump overboard. She was diagnosed with a histrionic personality disorder and was considered responsible for her behavior. Administrative separation was recommended given her poor adjustment to the demands of military service and lack of motivation for continued service.

f. During the two month period from May to July 1982, Petitioner received two nonjudicial punishments (NJP) for three instances of disobedience of a lawful order, unspecified conduct prejudicial to good order and discipline, absence from appointed place of duty, disrespect, and improper possession of alcohol. Thereafter, Petitioner was formally counseled regarding her misconduct and warned that failure to take corrective action could result in separation under other than honorable conditions.

g. The medical record reflects that on 17 August 1982 Petitioner reported to morning sick call, alleging that she had

been raped by a petty officer the previous evening at about 2000 hours. She was referred to a rape crisis center emergency room where she underwent an examination. The results of that examination are not on file in the medical record.

h. Petitioner received her third NJP on 24 August 1982 for two instances of disobedience of a lawful order and disorderly conduct. Punishment imposed consisted of a forfeiture of \$200 and 30 days of restriction and extra duty.

i. On 27 August 1981, Petitioner was notified that discharge under other than honorable conditions was being considered by reason of misconduct due to frequent involvement of a discreditable nature with military authorities and unsuitability due to inaptitude. She was advised of her procedural rights, declined to consult with counsel and waived her rights.

i. Petitioner received her fourth NJP on 20 September 1982 for disrespect, disobedience of a lawful order, and use of provoking speech and gestures. Punishment imposed was 30 days of correctional custody. Thereafter, the commanding officer recommended her discharge by reason of misconduct due to frequent involvement and unsuitability. The Chief of Naval Personnel directed discharge under other than honorable conditions on 5 November 1982. Petitioner was so discharged on 8 November 1982.

j. In her application, Petitioner states that after she enlisted in the Navy under the delayed entry program, her parents' health suddenly declined. Her father began having severe heart problems after by-pass surgery and her mother suffered a brain hemorrhage. She provides doctors' statements that her father had been disabled since April 1981 and her mother was unable to work since late November 1981 due to a brain hemorrhage. Petitioner claims that on the date she was to enlist she asked if it was possible to get out of her obligation because of her parents' health but was told that it was too late.

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 notes that although

Petitioner may have sought information regarding a hardship discharge there is no evidence that she ever submitted a request for such a separation. The Board also noted that prior to Petitioner's four NJPs she had been diagnosed with a personality disorder in which it was recommended that she be discharged for unsuitability due to her poor motivation and adjustment to the demands of military service. Had she been so discharged, she would have been discharged with the type of discharge warranted by the service record. The Board also notes Petitioner's allegations that she had been raped, and found it disturbing that the medical record does not contain the results of the examination conducted after the rape. Further, there is no information in the record as to what action, if any, the command took on the allegation. The Board does not condone Petitioner's misconduct. However, the Board believes her family problems at home and personality disorder impaired her ability to adequately serve and were contributing factors to her misconduct. The Board concludes that they were sufficiently mitigating to warrant recharacterizing her discharge under other than honorable conditions to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was issued a general discharge on 8 November 1982 by reason of misconduct vice the other than honorable 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.

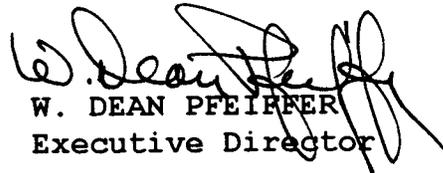
c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 4 October 1999.

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