



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 1036-01
25 June 2001

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 Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable discharge than the discharge under other than honorable conditions issued on 2 December 1983.

2. The Board, consisting of Ms. Madison and Messrs. Pfeiffer and Silberman reviewed Petitioner's allegations of error and injustice on 20 June 2001 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 10 September 1980 for four years at age 19. He was advanced to EM3 (E-4) and served without incident until a Navy drug laboratory reported that the urinalysis he submitted on 31 March 1983 had tested positive for marijuana. He was evaluated by a counseling and assistance center on 2 May 1983 and was found to be a drug abuser, but not drug dependent. Level I treatment was recommended.

d. On 13 August 1983 Petitioner received nonjudicial punishment (NJP) for use of marijuana. Punishment imposed consisted of reduction in rate to EMFN (E-3), forfeitures of \$366.60 per month for two months, and 45 days of restriction and extra duty.

e. On 20 October 1983, Petitioner was notified that administrative discharge action had been initiated by reason of misconduct due to drug abuse as evidenced by the positive urinalysis of 31 March 1983. He was advised of his procedural rights, declined to consult with legal counsel, and waived the right to present his case to an administrative discharge board (ADB). However, Petitioner did submit a statement to the effect that he tried to stay out of trouble during his naval career and set a good example for others, except for the fact that he smoked marijuana. He noted that there had been no other cases on board prior to his in which an individual was discharged for a positive urinalysis. He expressed regret for his abuse of marijuana and asked that his past performance, hard work and long hours be considered.

f. The commanding officer (CO) recommended a general discharge under honorable conditions by reason of misconduct due to drug abuse. The CO stated that Petitioner's abuse of drug could not be tolerated, his attitude toward drug abuse was one of indifference, and he refused to accept the fact that drug use while ashore would not be tolerated by the Navy. However, the CO recommended that his service be characterized as under honorable conditions given his otherwise good performance and unblemished conduct record. On 11 November 1983, the Commander, Naval Military Personnel Command directed that Petitioner be discharged under other than honorable conditions by reason of misconduct due to drug abuse. He was so discharged on 2 December 1983.

f. Since discharge, Petitioner has earned a bachelor of science degree and is employed as a journeyman electrician for a

state power company, and has served as a member of peer tutoring program helping students at a local junior college. The Federal Bureau of Investigation reports that Petitioner has no record of any civil convictions.

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 except for the single NJP which led to Petitioner's discharge, Petitioner's overall performance and conduct was highly satisfactory to the extent that his CO recommended a characterization of service of under honorable conditions. Although it was within the purview of the Commander, Naval Military Personnel Command to override the commanding officer's recommendation, the Board believes the commanding officer in this case was best qualified to determine which characterization of service was warranted. The Board additionally notes that Petitioner has at least in part, atoned for his drug related misconduct by his good post-service conduct. Accordingly, the Board concludes that it would be appropriate and just to recharacterize the other than honorable condition discharge to a general discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 2 December 1983 vice the other than honorable discharge actually issued on that date.

b. That a copy of the 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 9 February 2001.

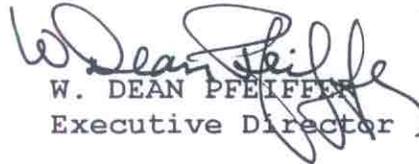
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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