



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

TRG  
Docket No: 101-99  
14 April 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

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 bad conduct discharge issued on 17 October 1989.

2. The Board, consisting of Mr. Brezna, Mr. Kastner and Mr. Milner, reviewed Petitioner's allegations of error and injustice on 6 April 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 reenlisted in the Navy on 24 October 1984 at age 26. At that time he had completed almost eight years of active service on two prior enlistments.

d. Petitioner then served without incident until 23 May 1988. On that date he was convicted by a special court-martial of three specifications of misconduct under Article 134, Uniform Code of Military Justice. The specifications read as follows:

Specification 1: Commit an indecent act upon a female under 16 years of age, to wit: by fondling her left breast, rubbing his hand over her back, and pulling the

back of her brassiere and letting it snap against her back with intent to gratify his sexual desires.

Specification 2: Commit an indecent act upon a female under 16 years of age, to wit: by squeezing her buttocks with his hand with intent to gratify his sexual desires.

Specification 3: Take indecent liberties with a female under 16 years of age, to wit: by saying to her "I may not look like the type that would go off and rip all your clothes off, but it does cross my mind because you are very attractive", with intent to arouse his sexual desires.

Petitioner was acquitted of one other specification. The court sentenced him to reduction to pay grade E-1, forfeiture of \$400 per month for three months, confinement at hard labor for three months and a bad conduct discharge. The bad conduct discharge was issued on 17 October 1989.

e. Petitioner stated in his application to the Naval Discharge Review Board (NDRB), in effect, that the teenage girl was not harmed and the case was completely blown out of proportion. He has submitted evidence that he had been steadily employed since discharge and has worked for the City of Myrtle Beach since January 1993. The Federal Bureau of Investigation has reported that Petitioner has no arrest record.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In reaching its decision the Board notes the isolated nature of the offense and his good record both before and after his court-martial conviction. Therefore, the Board concludes that Petitioner has been adequately punished for his misconduct and that the discharge should now be recharacterized to general as a matter of clemency.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 17 October 1989 he was issued a general discharge by reason of misconduct vice the bad conduct discharge now of record.

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

c. That the Department of Veterans Affairs be informed on

request that Petitioner's application was received on 5 January 1999.

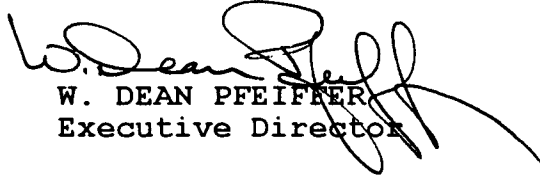
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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