



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

ELP
Docket No. 1827-99
12 August 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, a former enlisted member of the United States Navy/Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the bad conduct discharge issued on 28 August 1956.

2. The Board, consisting of Ms. Humberd, Mr. Caron, and Mr. Ivins, reviewed Petitioner's allegations of error and injustice on 4 August 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. Petitioner enlisted in the Marine Corps on 1 April 1954 for four years at age 17. He was advanced to PFC (E-3) and served for 13 months without incident. However, during the two month period from May to June 1955 he received two nonjudicial punishments (NJP) for disobedience and a two hour period of unauthorized absence.

d. On 9 March 1956, Petitioner was convicted by special court-martial of stealing government property which included four pair of trousers, six utility caps, and two pairs of gloves for a total value of \$17.50. He was sentenced to confinement at hard labor for six months, forfeitures of \$50 per month for six months, reduction in rank to PVT (E-1), and a bad conduct discharge. The Navy Board of Review affirmed the findings and the sentence on 17 May 1956. Petitioner waived his right to request restoration to duty and requested that the bad conduct discharge be executed. Clemency was denied and he received the bad conduct discharge on 28 August 1956.

e. 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 notes Petitioner 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 Marine Corps and individuals were routinely discharged. However, the Board notes that Petitioner's theft was relatively minor and believes that a bad conduct discharge was very harsh, even when his prior disciplinary record is taken into consideration. Accordingly, the Board believes that Petitioner has been sufficiently punished and concludes that it would be appropriate as a matter of clemency 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

28 August 1956 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.

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 16 March 1999.

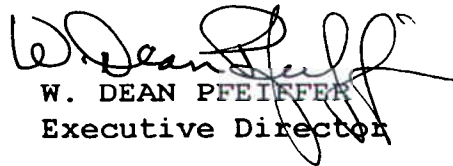
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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