



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

TJR
Docket No: 31-01
22 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
(b) SECNAVINST 1910.4A

Encl: (1) DD Form 149 with 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, in effect, that her discharge be upgraded.

2. The Board, consisting of Mr. Leeman, Ms. McCormick, and Ms. Wiley, reviewed Petitioner's allegations of error and injustice on 12 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the status of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 9 March 1959. During her enlistment, Petitioner was not the subject of any disciplinary actions.

d. On 22 January 1960, during an investigation by the Office of Naval Intelligence (ONI), Petitioner admitted to participating in homosexual acts after she was informed by one of her partners that her involvement in homosexual activities would eventually come to light.

e. On 17 February 1960 one of Petitioner's partners submitted a written statement in which she admitted that the two of them participating in homosexual acts in the barracks.

f. On 1 March 1960 Petitioner submitted a written statement in which she admitted that on one occasion she participated in homosexual act while on watch.

g. During the ONI investigations Petitioner stated that in spite of her participation in homosexual acts, she was experiencing problems and her involvement was strictly to determine her sexual preference. She further stressed that she was not a homosexual and that she wished to stay in the Navy because these acts would not recur.

h. Subsequently, Petitioner was administratively processed for separation by reason of unfitness due to participation in homosexual acts. The discharge authority directed an undesirable discharge and on 18 March 1960 she was so separated. At the time of her separation, her conduct and proficiency marks were high enough, under normal circumstances, to warrant an honorable characterization of service.

i. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. 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 service members who commit a homosexual act or acts. If separated, the service member'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 finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board initially notes Petitioner's participation in homosexual activities included one such act which occurred while she was on watch. The Board believes that this act occurred under aggravating circumstances with an adverse impact comparable to the impact of such activity aboard ship. However, the Board further notes that reference (b) does not mandate discharge under other than honorable conditions if an aggravating factor is present, but only authorizes such a characterization if an aggravating factor is found to exist. The Board concludes that based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 18 March 1960, the date of Petitioner's discharge, 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 despite the presence of an aggravating factor. In this regard, the Board notes her unblemished disciplinary record and good performance. Although her conduct and proficiency averages would normally warrant an honorable discharge the Board concludes that given the presence of an aggravating factor, recharacterization to a general discharge is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was issued a general discharge on 18 March 1960 vice the undesirable discharge actually issued on that date.

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

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 6 November 2000.

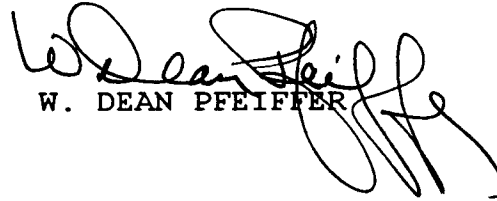
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ALAN E. GOLDSMITH
Acting Recorder

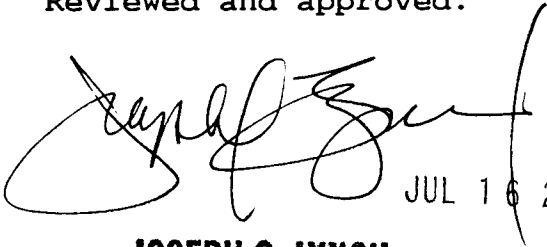
ROBERT D. ZSALMAN
Recorder

5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



JUL 16 2001

JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)