



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

TRG
Docket No: 1450-00
12 July 2001

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
(2) 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 that his record be corrected to show a better characterization of service than the undesirable discharge issued on 15 March 1955.

2. The Board, consisting of Mr. Mazza, Mr. Harrison and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 26 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 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 17 October 1950 after three years of prior active duty. On 19 November 1953 and 19 October 1954 he received nonjudicial punishments for disobedience. Punishment in both cases extended only to brief periods of restriction.

d. On 25 September 1954 he was arrested by civil authorities on a charge of unauthorized use of an automobile and was held pending trial. On 18 November 1954 he pled guilty to

the offense and was sentenced to a fine of \$100 and costs. He paid the fine on 23 November 1954 and was delivered to the shore patrol that same day.

e. A special court-martial convened on 9 December 1954 and convicted Petitioner of an unauthorized absence of about 63 days, the period he was held by civil authorities, and missing ship's movement during that period. The court sentenced him to a reduction in rate and a letter of reprimand.

f. Subsequently Petitioner was processed for an administrative discharge based on his conviction by civil authorities. On 25 February 1955 the discharge authority approved the recommendation of his commanding officer that he be discharged for misconduct with an undesirable discharge. He was so discharged on 15 March 1955.

g. Concerning the charge of unauthorized use of an automobile, Petitioner states that his wife and children were sick and they had not received their allotment check. He states that he started hitchhiking and walking from Portsmouth to Staunton Virginia to assist his wife. He was walking towards home about midnight when he discovered an unlocked care with the keys in the ignition. Yielding to temptation he took the car to complete his journey. He states that he stayed with his wife over the weekend, drove the car back to Portsmouth and told the police what he had done. No damage was done to the vehicle and it was returned to the owner. He contends that there is no evidence he was convicted of a felony and he was improperly discharged.

h. The Board obtained a report from the Federal Bureau of Investigation (FBI) which shows that he was arrested on 24 September 1954 for grand larceny of an automobile but there is no disposition of that charge entered on the report. There are no other entries on the FBI report.

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 prior to the civil conviction, Petitioner's record was marred by only the very minor disciplinary actions. Concerning the court-martial conviction, the Board is aware that Petitioner's unauthorized absence resulted from his period of civil confinement when he was held by the civil authorities pending trial, and not out of any desire to absent himself. The Board notes Petitioner's version of the events is supported by the very lenient sentence that was imposed by the court. However, the Board believes that he was properly

discharged under regulations then in effect. Given the relatively minor nature of the offense and the fact that he has been a good citizen since 1955, the Board concludes that recharacterization of the discharge is now warranted as a matter of clemency.

RECOMMENDATION:


- a. That Petitioner's naval record be corrected to show that on 15 March 1955 he was issued a general discharge by reason of misconduct vice the undesirable 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 upon request that Petitioner's application was received by the Board on 23 February 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.

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