



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

WMP
Docket No. 0614-02
15 July 2002

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 1910.4B

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 discharge be upgraded.

2. The Board, consisting of Messrs. Neuschafer, Cooper, and Dunne, reviewed Petitioner's allegations of error and injustice on 10 July 2002 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 at age 17 on 27 July 1954 for four years. He was advanced to third class petty officer (E-4) on 16 November 1956 and served without incident until 13 November 1956.

d. On 13 November 1956 Petitioner admitted to participating

in an act of homosexual conduct. Specifically, Petitioner and another man were discovered committing a homosexual act in a parked car at 0110 hours in a parking lot. Pursuant to this admission Petitioner requested an undesirable discharge for the good of the service to escape trial by general court-martial. His request was forwarded to the Chief of Naval Personnel (CNP) on 6 December 1956 and was granted by CNP on 20 December 1956. He received an undesirable discharge due to unfitness on 15 January 1957.

e. Reference (b) sets forth the Department of the Navy's current policies, standards and procedures for administratively separating enlisted servicemembers. 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 servicemembers who commit a homosexual act or acts. If separated, the servicemember'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 now finds the existence of an injustice warranting corrective action. 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 the date of Petitioner's discharge, the Board concludes that it would be in the interests 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

fact that the homosexual act at issue might be deemed to have occurred openly in public view. In this regard, the Board notes that the participants did not flaunt their behavior, in fact, it is clear that they did not desire to be seen. The Board further notes Petitioner's unblemished record up until this incident. Accordingly, the Board concludes that recharacterization to a general discharge is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge by reason of unfitness on 15 January 1957, vice the undesirable discharge actually issued on that date.

b. That no further relief be granted.

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

d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 23 January 2002.

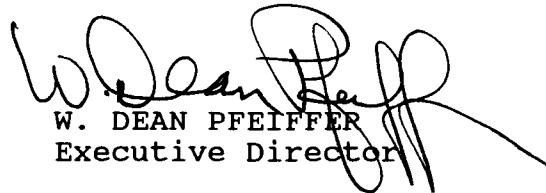
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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