



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

TJR
Docket No: 4365-02
9 January 2003

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, the son of a deceased former enlisted member of the Navy, filed enclosure (1) with this Board requesting that Subject's undesirable discharge be recharacterized to honorable.

2. The Board, consisting of Mr. Beckett, Mr. Kim, and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 7 January 2003 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 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. Subject enlisted in the Naval Reserve on 3 August 1943 at age of 18 to serve for two years. At that time, he had completed only six years of formal education. He immediately reported for a period of extended active duty.

d. During Subject's period of service, while serving aboard the USS REINA MERCEDES from 2 October 1943 to 9 August 1944, he received captain's mast (CM) on 11 occasions and was convicted by a summary court-martial (SCM). His offenses were two periods of

unauthorized absence (UA) totalling five days, six periods of absence from his appointed place of duty, three incidents of failure to obey a lawful order, two incidents of breach of discipline, and disobedience.

e. On 19 August 1944 Subject was transferred from the USS REINA MERCEDES and reported aboard the USS MISSOURI. The following month, on 25 September 1944, the Defense Intelligence Office (DIO) submitted a memorandum to MISSOURI's commanding officer (CO) that reported, in part, as follows:

. . . (Subject) on 11 February 1944 attended an American Youth for Democracy (AYD) sponsored Valentine Victory Prom . . . (in) Baltimore, Md. This dance was attended by approximately 275 persons, of whom about 45% were colored. Mixed dancing and drinking prevailed, and those in attendance were asked several times to purchase copies of the . . . official publication of (AYD) and to accept application blanks for membership . . .

(AYD) . . . has among its membership a great many know (sic) Communist Party members and sympathizers. Its membership is composed primarily of those who formerly belong (sic) to its predecessor, the Young Communist League, and this organization is making an all out attempt to increase its membership. It is known that the (AYD) is a Communist organization and that it is partly supported by financial aid from the Communist party . . .

At the present time, no investigation of Subject activities is pending in this office, however, if requested, this office is ready, able, and willing to conduct an appropriate investigation to determine if Subject is engaged in any communistic or un-American activities.

The memorandum also noted Subject's poor disciplinary record while assigned to the REINA MERCEDES.

f. It appears that either MISSOURI's CO did not receive the foregoing memorandum in a timely manner or did not receive it at all, since that command did not take any action on it. The command did impose CM on 2 October 1944 for failure to obey a lawful order, and Subject was awarded restriction for 20 days. On 6 October 1944 he was transferred to the USS MONTICELLO where he served without incident.

g. On 19 July 1945 Subject was transferred to the Receiving Station, Philadelphia, PA. It appears that the DIO memorandum finally "caught up" to Subject because, on 24 July 1945, the CO

requested authority to discharge Subject by reason of unfitness, noting Subject's alleged communistic activities and disciplinary infractions.

h. On 2 August 1945 the discharge authority directed an undesirable discharge by reason of unfitness. On 26 September 1945 Subject was so discharged.

i. In an attachment to Petitioner's application, counsel contends that the SCM was held in violation of the Sixth Amendment to the Constitution, Subject was the victim of racial discrimination, his right to free association was violated, and his wartime misconduct was relatively minor.

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 Subject's youth, possible immaturity, and limited education. The Board is aware of his disciplinary infractions and does not condone this record of misconduct, but is also aware that it consisted primarily of very minor offenses. Furthermore, the Board notes that once Subject was no longer aboard the USS REINA MERCEDES, he served for more than a year with only one minor disciplinary infraction.

The Board then concluded that Petitioner has not presented any evidence in support of the contention that the SCM was constitutionally deficient. However, Subject's disciplinary infractions were clearly secondary to the real reason for separation, his alleged communistic activities. In this regard, given his reasonably good record after leaving REINA MERCEDES, the Board does not believe that Subject would have been processed for separation if not for the DIO memorandum. However, that memorandum only stated that Subject attended a social function sponsored by a communistic organization where "mixed" dancing and drinking prevailed. In addition to reflecting the casual and reflexive racism which prevailed at the time, there was nothing in the memorandum to suggest that Subject joined the organization, subscribed to its views, or was a disloyal American in any way.

Based on the foregoing, and considering the fact Subject has suffered the consequences of a undesirable discharge for nearly 60 years, the Board concludes that no useful purpose is served by continuing to characterize Subject's service as having been under other than honorable conditions and recharacterization of the undesirable discharge is appropriate. However, the Board cannot justify a fully honorable discharge given his record of frequent disciplinary infractions. In this regard, the Board notes that there is no evidence to show that any of these adverse actions

were racially motivated. Accordingly, the Board concludes that the discharge should be changed to a general discharge, under honorable conditions.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was issued a general discharge on 26 September 1945 vice the undesirable discharge actually issued on the same day.

b. That the Department of Veterans Affairs be informed, upon request, that Petitioner's application was received by the Board on 21 February 2002.

c. That a copy of this Report of Proceedings be filed in Subject's naval record.

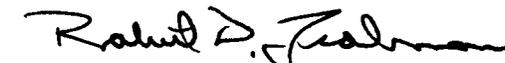
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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 Regulation, 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.



For W. DEAN PFEIFFER
Executive Director