



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

CRS
Docket No: 6074-99
30 March 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

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, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the other than honorable discharge issued on 23 December 1992. He also requests that his reenlistment code be changed.

2. The Board, consisting of Mr. Lightle, Ms. Gilbert, and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 7 March 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 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 on 20 February 1991 at age 26.

d. A special court-martial convened on 23 October 1992 and found Petitioner guilty of an 80 day period unauthorized absence, from 19 June to 9 September 1992, terminated by his apprehension. The court sentenced him to confinement for 45 days and reduction

to pay grade E-1.

e. On 2 December 1992 the commanding officer recommended that Petitioner be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense. After review by the Chief of Naval Personnel (CNP), the recommendation for separation was approved and an other than honorable discharge was directed. According to Petitioner he was discharged with an other than honorable discharge and an RE-4 reenlistment code on 23 December 1992. The record is incomplete in that it does not contain a Certificate of Release or Discharge from Active Duty (DD Form 214).

f. An advisory opinion from the Navy Personnel Command stated that due to administrative error the case was not forwarded to the Secretary of the Navy for approval as required. Therefore, the opinion recommended that Petitioner receive a general discharge but no change to the RE-4 reenlistment code.

g. Applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged by reason of misconduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board initially concludes that the evidence of record is sufficient to show, despite the absence of a DD Form 214, that Petitioner was discharged on 23 December 1992 under other than honorable conditions with an RE-4 reenlistment code. The Board also agrees with the advisory opinion that the other than honorable discharge is inappropriate because, under the circumstances, CNP was not authorized to direct such a characterization and accordingly, the discharge should be changed to a general discharge.

Although Petitioner requested that his reenlistment code be changed, the Board notes that an RE-4 reenlistment code is required by regulatory guidance for individuals discharged by reason of misconduct. Therefore, the Board concludes that there is no error or injustice in his reenlistment code.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 23 December 1992 vice the other than honorable discharge.

b. That no further relief be granted.

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

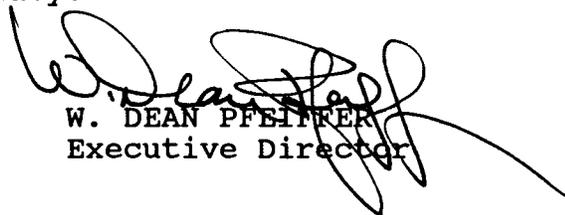
d. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 24 September 1999.

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