



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5104TRG

Docket No: 9829-05  
30 March 2007

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  
(b) DODDIR 1332.14

Encl: (1) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, Subject's brother-in-law and conservator of her estate, filed an application with this Board requesting a better characterization of service then the undesirable discharge issued on 28 October 1964.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 March 2007 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 consider the application on its merits.

c. Subject enlisted in the Navy on 26 April 1963 at age 25. She then served in an excellent manner for about 18 months. However, in October 1964, she was accused of participating in homosexual acts. In her statement, she admitted to committing homosexual acts but regretted her actions. Based on her admission, she was processed for an administrative discharge. After review, the discharge authority directed an undesirable discharge by reason of unfitness and she was so discharged on 28 October 1964.

d. Reference (b) sets forth the Department of the Defense'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.

f. Petitioner's military records failed to disclose the presence of any of the aggravating circumstances which would warrant the issuance of an other than honorable discharge under the provisions of reference (b).

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 by reference (b) and its radical departure from the policy which was in effect on 28 October 1964 the date of Petitioner's discharge, the Board concludes that 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 to an

honorable discharge is appropriate.

The Board further concludes that this Report of Proceedings should be filed in Subject's naval record so that all future reviewers will understand the reasons for recharacterization of the discharge.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that on 28 October 1964, she was issued an honorable discharge by reason of unfitness vice the undesirable discharge actually issued on that date.

b. That the Department of Veterans Affairs be informed upon request that the application for recharacterization of the discharge was received by the Board on 24 October 2005.

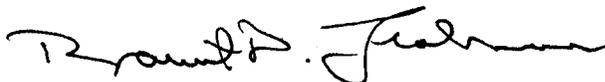
c. That this Report of Proceedings be filed in Subject's naval record.

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 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.

  
For W. DEAN PFEIFFER  
Executive Director