



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

SMW
Docket No: 5094-06
29 September 2006

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) 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 Reserve, applied to this Board requesting an upgrade of the bad conduct discharge he received on 23 November 1945.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 September 2006, 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 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 enlisted in the Navy Reserve on 1 July 1942 at age 19 and immediately began serving on two years of active duty. At that time Petitioner had completed nine years of education and attained test scores that placed him in mental group IV.

d. During the period from 23 April 1943 to 31 March 1944, Petitioner received three captain's masts (CM's) and was convicted by two summary courts-martial (SCM's). His offenses included two instances of leaving the station before being properly relieved, three instances of unauthorized absence (UA)

totaling about three days, failure to stand watch, and missing the draft.

e. On 6 April 1944 Petitioner reported aboard the USS LAMAR (APA 47) for duty.

f. On 15 and 22 April 1944 Petitioner was convicted by SCM of a 40 minute period of UA and failure to attend class.

g. During the period from 21 to 27 July 1944 Petitioner participated in the amphibious assault landing and retake of Guam.

h. On 20 and 21 October 1944 Petitioner participated in the initial amphibious assault landing on the Japanese held island of Leyte.

i. During the period from 9 to 11 January 1945 Petitioner participated in the initial amphibious assault landing on the Japanese held island of Luzon.

j. On 29 January 1945 Petitioner participated in the amphibious assault landing of the island of Santonio Luzon.

k. During the period from 7 to 14 February 1945 Petitioner received a CM and was convicted by two SCM's. His offenses included two instances of UA totaling 10 hours and deserting a working party.

l. During the period from 1 to 5 April 1945 Petitioner participated in the initial amphibious assault landing on Okinawa.

m. On 13 May 1945 Petitioner received CM for three hours of UA.

n. On 27 May 1945 Petitioner was convicted by SCM of six days of UA. The court sentenced him to forfeitures of pay and a bad conduct discharge (BCD). On 28 May 1945 the forfeitures of pay were remitted.

o. On 2 June 1945 Petitioner reported to the receiving station in San Francisco.

p. On 20 July 1945 the BCD was remitted and Petitioner was placed on probation until 27 November 1945.

q. On 23 October 1945 Petitioner received CM for being UA from the commanding officer's inspection, shirking duties, sleeping in an unauthorized birth and barracks, missing muster, and being out of uniform.

r. The commanding officer subsequently ordered the BCD executed and on 23 November 1945, Petitioner was so discharged. At that time, the record shows that he was awarded the Philippine Liberation Ribbon with two stars and was also authorized to wear the Amphibious Insignia.

s. In his application, Petitioner states that he received a BCD during August 1945, and has since lived an exemplary life. Petitioner further states that at the time of his discharge, he was young and had just returned from Okinawa and used poor judgment. Petitioner requests compassion in the interest of justice.

t. A Federal Bureau of Investigation (FBI) report of 14 September 2006 shows that Petitioner has no criminal record.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board is aware that Petitioner's disciplinary actions were proper and the BCD was in accordance with the law and regulations. Nevertheless, the Board takes into account Petitioner's service in World War II, specifically, participation in five significant amphibious assault landings, most of which were conducted on Japanese held islands. The Board also noted Petitioner's awards of record. The Board is also aware of his age at the time of enlistment, his limited education, youth, and the fact that he has no criminal record since discharge. The Board also found that Petitioner's disciplinary infractions were relatively minor. Weighing the positive aspects of Petitioner's service against the negative aspects, the Board concludes that as a matter of clemency, Petitioner's separation should be changed to a general discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge on 23 November 1945, vice the BCD actually issued on that date.

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

c. That upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 12 June 2006.

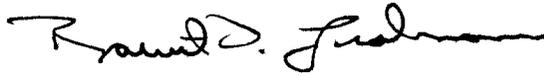
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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.



W. DEAN PFEIFFER
Executive Director