



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

CRS
Docket No: 7580-06
4 February 2008

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

Subj: FORMER [REDACTED]; REVIEW
OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 1910.4B

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

1. Pursuant to the provisions of reference (a), Petitioner applied to this Board requesting that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 2 May 1968.

2. The Board, consisting of Ms. [REDACTED] and Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 January 2008 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. Petitioner reenlisted in the Navy on 31 January 1963 after more than one year of prior active service. On 14 March 1968 he made a sworn statement that he was involved in a homosexual marriage with a civilian.

c. On 11 April 1968 Petitioner's commanding officer recommended that he be separated from the Navy with an undesirable discharge by reason of unfitness due to homosexual acts. After review by the discharge authority, the recommendation for separation was approved and Petitioner was discharged with an undesirable discharge on 2 May 1968.

d. At the time of Petitioner's discharge, character of service for Sailor's not discharged for cause was based, in part, on conduct and overall trait averages, both of which were

computed from marks assigned during periodic evaluations. Petitioner's conduct and overall trait averages were 3.70 and 3.67, respectively. The minimum average marks required for a fully honorable characterization of service on 2 May 1968 were 3.0 in conduct and 2.7 in overall traits.

e. Reference (b) sets forth the Department of the Navy's current policies, standards and procedures for administratively separating enlisted service members. 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 service members who commit a homosexual act or acts. If separated, the service member'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 individuals committed a homosexual act 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 violates customary naval super-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 and good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

In Petitioner's case, his military records fail to disclose the presence of any aggravating circumstances which would warrant the issuance of a discharge under other than honorable conditions under the provisions of reference (b).

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable 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 2 May 1968, 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. The Board finds that given Petitioner's final conduct and overall trait averages, relief in the form of recharacterization to honorable is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge by reason of unfitness on 2 May 1968 vice the undesirable discharge actually issued on that date.

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


JAMES R. EXNICIOS
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