



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

BAN
Docket No: 11076-07
19 August 2008

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

Subj: REVIEW OF NAVAL OF RECORD [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, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting that the characterization of his discharge (under other than honorable conditions (UOTH)) be changed.

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 August 2008. Pursuant to its regulations, the majority, Ms. Bollinger and Ms. Prevatt determined that the corrective action indicated below should be taken on the available evidence of record. The minority, Mr. Dunn, recommended that Petitioner's request be denied. 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 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 in March 1988. During Petitioner's period of service he received three nonjudicial punishments (NJP's) in June, September, and October 1988,

respectively. His offenses were assault (a fight with another service member), disobeying a lawful regulation (not in proper uniform) and unauthorized absence (UA) (late for seven restricted musters).

d. Petitioner was processed for an administrative separation by reason of misconduct due to a pattern of misconduct. In October 1988, he was sent to an administrative separation board where it was recommended he be separated with a UOTH discharge due to misconduct. On 10 October 1988, he was issued a UOTH discharge.

e. In Petitioner's application, he notes his past mistakes and immaturity was over 20 years ago. He additionally states that he now owns his own company and has been a strong leader in his community and church, and he offers 12 letters of recommendation that show his honor and integrity. He states that he wants to further serve his country by joining the Army National Guard.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority concludes that Petitioner is entitled to the relief requested. The majority finds that although he committed misconduct and do not condone his infractions, the majority's finding is based on his exemplary post military career and his service to his community since his discharge over 20 years ago. The majority finds that the infractions were minor in nature and did not warrant a UOTH discharge. Based on the foregoing, and considering the fact that Petitioner has suffered the consequences of such a discharge for more than 20 years, the majority concludes that no useful purpose is served by continuing to characterize his service as having been UOTH conditions, and recharacterization to a general discharge is appropriate. In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 18 October 1988 vice a UOTH discharge on the same day.

MINORITY CONCLUSION:

The minority believes that no relief is warranted. Petitioner assaulted another service member and that is not acceptable under

any circumstances. He was given several chances to correct his behavior and failed to do so by committing additional misconduct which warranted an administrative separation board by reason of a pattern of misconduct, and ultimately a UOTH discharge. The minority concludes that he has not sustained his burden of showing substantial evidence of an error or injustice.

MINORITY RECOMMENDATION:

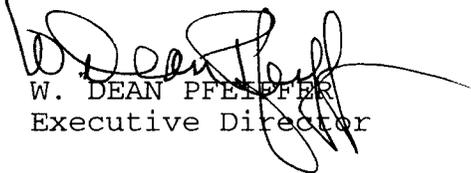
a. That Petitioner's request be denied.

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.

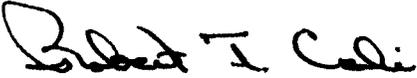
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

MAJORITY REPORT
Reviewed and approved:


8-28-08

MINORITY REPORT
Reviewed and approved: