



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

JRE
Docket No. 1267-08
3 November 2008

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

Subj: FORMER [REDACTED] REVIEW
OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was discharged by reason of a personality disorder or physical disability, vice misconduct/commission of a serious offense.

2. The Board, consisting of Messrs. W. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 30 October 2008 and, pursuant to its regulations, determined that the partial 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 20 July 2001. He received nonjudicial punishment on 21 January 2003 for the offense of assault consummated by a battery, by grabbing the arm

of another person. He underwent psychological evaluation on 8 December 2003 and was given diagnoses of an adjustment disorder with depressed mood, partner relational problems, and a personality disorder. The psychologist determined that he was psychologically fit for duty, but unsuitable for service due to the personality disorder. On 17 February 2004, his commanding officer recommended that he be discharged for the convenience of the government by reason of the personality disorder, as well as by reason of misconduct/commission of a serious offense, based on the assault consummated by a battery. On 20 February 2004, the separation authority directed that Petitioner be discharged by reason of commission of a serious offense, with a general discharge. He was so discharged on 9 March 2004.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner failed to submit sufficient relevant evidence to demonstrate that he was unfit for service by reason of physical disability that was incurred in or aggravated by his naval service. In addition, it notes that a personality disorder is not considered to be a disability under the laws administered by the Department of the Navy.

The Board concludes further that it would have been more appropriate to discharge Petitioner by reason of a personality disorder, with the type of discharge warranted by his service record, rather than misconduct/commission of a serious offense, as it does not appear that his offense was particularly serious in nature. It noted that nonjudicial punishment is normally imposed as punishment for minor offenses, and that Petitioner's discharge was based on an offense for which he had received nonjudicial punishment more than a year before he was recommended for discharge.

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 on 9 March 2004, he was honorably discharged by reason of a personality disorder, vice misconduct/commission of a serious offense.

b. That so much of Petitioner's request for correction of his naval record as exceeds the foregoing be denied.

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

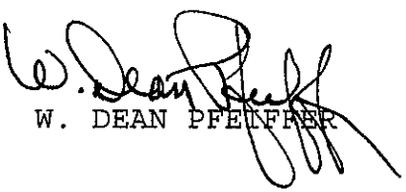
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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