



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

Docket No: 2314-08
12 December 2008

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

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed an application with this Board requesting that his under other than honorable conditions (UOTH) discharged be upgraded.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 December 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. 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. Petitioner enlisted in the Navy on 26 January 1979 at age 20. On 16 September 1969 and 1 March 1971 he was counseled concerning his poor performance, bad attitude and failure to obey orders. During the period from 16 March 1971 to 5 August 1971 he received nonjudicial punishment on four occasions. His offenses were two short periods of unauthorized absence and six instances of disobedience. Additionally on 21 April 1971 he was arrested by civil authorities and was ultimately convicted of malicious mischief.

d. Based on the foregoing record, Petitioner was processed

for an administrative discharge. On 17 August 1971 an administrative discharge board (ADB) recommended that he be separated with a UOTH discharge and the commanding officer agreed with this recommendation. However on 15 September 1971, the Bureau of Naval Personnel (BUPERS) directed a general discharge under honorable conditions by reason of unfitness. The reason for the BUPERS determination as to the characterization of service is not set forth in the record. Petitioner was discharged on 21 September 1971. The DD Form 214 issued at that time indicates that he was discharged under other than honorable conditions instead of under honorable conditions as directed by BUPERS.

e. Petitioner contends in his application that he had a drinking problem while in the Navy which led to bad decisions.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Although the reasons for the BUPERS action in directing a general discharge instead of the UOTH discharge recommended by the ADB and the commanding officer are not set forth in the record, it is clear that the action directed by BUPERS was binding on the command. Therefore, the Board concludes that Petitioner's record should be corrected to show that on 21 September 1971 he was discharged under honorable conditions vice the UOTH discharge now shown on his DD Form 214.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the change in the characterization of his service.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 21 September 1971 he was issued a general discharge under honorable conditions vice the UOTH discharge now shown on his DD Form 214.

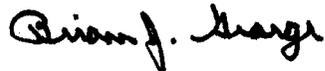
b. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 6 March 2008.

c. That 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


BRIAN J. GEORGE
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 PFENFFER
Executive Director