



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

BAN
Docket No: 04013-08
9 February 2009

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) 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 United States Navy, filed enclosure (1) with this Board requesting, in effect, that his other than honorable (OTH) discharge be upgraded.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 January 2009 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 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 reenlisted in the Navy on 15 February 1989 for his third term. On 5 November 1991, Navy Criminal Investigative Service (NCIS) conducted and completed their investigation regarding alleged misconduct regarding stolen merchandise, unaccounted for supplies, and the illegal adjustment of the

ship's inventory records. As a result of the investigation, on 18 March 1992, he received nonjudicial punishment (NJP) for conspiracy, dereliction of duty, making a false official statement, and forgery. He claims that although he knew of the discrepancies, he was not illegally adjusting the records. He claims that his division officer was illegally adjusting the records. Administrative separation action was initiated based on COSO and he was offered an administrative discharge board (ADB). He requested an ADB which recommended that he be separated from military service with OTH discharge. The commanding officer endorsed the separation, but recommended a general discharge. However, the separation authority directed an OTH discharge, and on 1 August 1992, he was separated with an OTH discharge and an RE-4 reenlistment code.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board's conclusion is based on the belief that Petitioner's punishment was disproportionate to the offense. The Board takes into consideration his outstanding military service from 1977 to 1991, although he did commit the offense which resulted in an NJP. Based on the fact that his superior officer was involved in the misconduct, the Board believes that he was not the initiator in the offense. In addition, he admitted that what he did was wrong in not informing the chain of command of his superior's illegal actions and regrets his actions. The Board notes he was naive and did not fully appreciate the consequences of his actions. Furthermore, the Board concurs with the commanding officer's original recommendation of a general discharge based on his prior outstanding service. Based on the foregoing, the Board concludes that the interest of justice would be better served in his recharacterization to a general discharge.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective actions.

RECOMMENDATION:

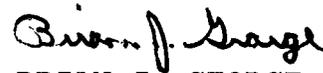
a. That Petitioner's naval record be corrected to show that he received a general discharge on 1 August 1992 vice an OTH discharge issued the same day.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of 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 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 PENIFFER
Executive director