



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

SMS
Docket No: 7160-08
26 March 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) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, applied to this Board requesting a general discharge vice the other than honorable (OTH) discharge that was issued on 7 May 1990.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 March 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 Petitioner's application 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. On 4 May 1988, Petitioner enlisted in the Navy at age 18. At that time, he had completed eight years of education and attained average scores on entrance tests. His accession urinalysis tested positive for marijuana, but he was authorized retention, counseled regarding his misconduct, and warned that further infractions could result in administrative separation.

d. On 16 October 1989, Petitioner had nonjudicial punishment (NJP) for drunk and disorderly conduct. He was subsequently given another discharge warning and advised that substance abuse treatment was available. During the period 14 November 1989 to 9 March 1990, he

had NJP on four occasions. His offenses included two instances of failure to go to his appointed place of duty, two instances of dereliction in the performance of his duties, two instances of absence from his appointed place of duty, disrespect, and two instances of disobedience of a lawful order. During this period, he received medical treatment on several occasions after falling down stairs and it appeared that he had been drinking.

e. On 28 March 1990, Petitioner's commanding officer initiated administrative separation by reason of misconduct due to a pattern of misconduct and commission of a serious offense. In connection with this processing, he acknowledged that separation could result in an OTH discharge and waived the right to have his case heard by an administrative discharge board (ADB). On 11 April 1990, the separation authority approved the recommendation and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 7 May 1990, he was so discharged.

f. Petitioner requests an upgrade of his discharge to general because he did not intentionally violate regulations and believes that he had permission, specifically, on one occasion to seek medical treatment and on another occasion he was held accountable for a procedural error that was made by a junior Sailor.

g. Regulations authorize issuance of an OTH discharge for members separated by reason of misconduct. Regulations also authorize a general discharge in such cases.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board finds that his discharge was processed in accordance with regulations, but finds that his overall service did not warrant an OTH discharge. In this regard, the Board finds that his disciplinary infractions were relatively minor, as evidenced by his offenses that included four instances of absence from his appointed place of duty that did not even total one day. Furthermore, the Board considers his youth, eight years of education, and apparent alcohol abuse for which there is no record of him receiving treatment. Therefore, as a matter of clemency, the Board concludes that his discharge should be changed to general.

CONCLUSION:

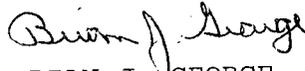
a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 7 May 1990, vice the OTH discharge that was issued on that date.

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

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 24 July 2008.

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 PFEIFFER
Executive Director