



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

SMS  
Docket No: 7243-08  
27 March 2009

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

Subj: REVIEW OF NAVAL RECORD OF E [REDACTED]  
[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 an honorable discharge vice the other than honorable (OTH) discharge that was issued on 18 July 1985.

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 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. 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 29 January 1980, Petitioner enlisted in the Navy at age 17 with parental consent. At that time, he had completed ten years of education and attained average scores on the entrance tests. He subsequently began serving on board a naval vessel. On 18 June 1982, he received emergency medical treatment and was initially diagnosed with erratic tension pneumothorax in which a chest tube was inserted. He was then transported to another ship and air-evacuated to a military hospital when his lungs collapsed. On 29 June 1982, while hospitalized, he was diagnosed with spontaneous pneumothorax in his right lung and he continued to receive treatment that included a chest tube. On 8 July 1982, a medical entry stated that he had

numbness in his leg where he received an injection of demoral and that femoral nerve injury may have occurred that may have taken months to heal if it ever would. On 16 July 1982, a medical entry noted that his spontaneous pneumothorax, he was doing well except for the numbness in his leg, and was directed to return to his parent command in a full duty status. On 27 July 1982, a medical entry stated that he had recurrent spontaneous pneumothorax and was again air-evacuated to a military facility for treatment. The record shows that he then continued to receive treatment for recurrent bilateral pneumothorax at a military hospital until 9 October 1982, at which time he was directed to return to his ship after 30 days of convalescent leave. On 29 December 1982, he received emergency medical treatment for chest pains, weight loss, and vomiting, and was diagnosed as having a viral syndrome and directed to follow up with another medical evaluation if his symptoms persisted.

d. On 12 January 1983, he began a 781 day period of unauthorized absence (UA) that ended on 3 March 1985, when he surrendered. On 10 April 1985, he received a psychiatric evaluation during which time he stated that no one cared and he went UA because he feared that his lungs would collapse again while on ship. The evaluation resulted in no psychiatric diagnosis. On 19 April 1985, he received a physical examination that found him qualified for discharge. On 22 April 1985, he received a medical evaluation that noted his medical history and he stated that he was not in good health and got sick when working. The medical evaluation noted that he had scars on his back, pain to his chest, and concluded that it was a normal exam. On 7 May 1985, medical treatment provided by the brig sickbay noted his medical history of spontaneous pneumothorax, bilateral plurodesis (surgeries), that he had a productive cough and general malaise, and concluded by prescribing medication and an x-ray.

e. On 5 June 1985, Petitioner was convicted by a special court-martial of the 781 day period of UA. His sentence included forfeitures of pay, confinement at hard labor, and reduction in rank. On 6 June 1985, his commanding officer initiated administrative separation by reason of misconduct due to 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). His commanding officer endorsed this action by recommending an OTH discharge based on the UA and did not include information regarding his medical history. On 1 July 1985, the Secretary of the Navy approved the recommendation and directed an OTH discharge by reason of misconduct due to commission of a serious offense. On 18 July 1985, he was so discharged.

f. Petitioner states in essence that his lungs collapsed three times while at sea, he was hospitalized for eight months, he was then directed to return to his ship that was scheduled to deploy again, and that he was afraid that his lungs would collapse again while at sea. With his application, he provided a letter dated 14 May 2007, from his physician, Dr. L---, who states that Petitioner's extensive

and complicated medical history began while he was in the Navy and because of the poor technology and treatment available at the time on board a ship, the outcome was very poor. Dr. L--- concluded with Petitioner's diagnoses of status post multiple spontaneous pneumothorax with multiple plueraldesis resulting in restrictive and obstructive pulmonary disease at a premature age; chronic pain syndrome secondary to the above diagnosis; and complete disability secondary to the two prior diagnoses.

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 partial relief. Specifically, the Board finds that his discharge was processed in accordance with regulations, but notes that he had no other offenses except for the one for which he was discharged, and finds that the separation authority was not aware of the extenuating circumstances that led to his period of UA. Specifically, bilateral spontaneous pneumothorax that began occurring more than two years after he enlisted, and after he was directed to return to his ship even though this condition reoccurred and he continued to suffer from complications. In this regard, the Board finds that the record supports his explanation of events that led to his period of UA. The Board also considers the letter that was provided to the Board from his physician. Therefore, given his misconduct, the Board concludes that as a matter of clemency, he should be granted partial relief and as such his discharge should be changed to general.

RECOMMENDATION:

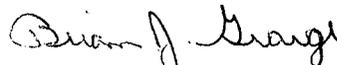
a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 18 July 1985, vice the OTH discharge that was issued on that date.

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

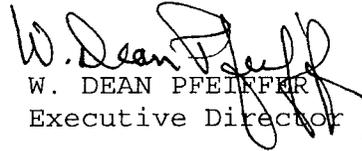
c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 25 July 2008.

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