



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

BAN
Docket No: 07821-08
29 May 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 bad conduct discharge (BCD) be upgraded.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 21 May 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 enlisted in the Navy on 25 September 1980. He then served for approximately three years without disciplinary incident. However, on 29 March 1983, he received a referral to the mental health facility for an evaluation. On 8 May 1983, he was diagnosed with a mixed personality disorder and was

recommended for a medical discharge. However, he was not separated by his command, but continued on active duty.

d. Shortly thereafter, Petitioner entered on an unauthorized absence (UA) status. On 30 April 1984, he was convicted at a special court-martial (SPCM) of two specifications of UA, in excess of 148 days. He was sentenced to a bad conduct discharge (BCD).

e. On 9 May 1984, after Petitioner's conviction at a SPCM, he received another mental health review where he was again diagnosed with a mixed personality disorder.

f. Petitioner was separated with a BCD on 26 April 1985, due to his conviction at a SPCM and received 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 was diagnosed with a mixed personality disorder by a mental health professional and was recommended for separation. However; his command retained him on active duty, in spite of his diagnosis. The Board takes into consideration that although he did commit the misconduct in April 1984, which resulted in a SPCM, it believes that it was due to his mental health problems. Based on the foregoing, the Board concludes that as a matter of equity, he would be better served with a recharacterization to a general 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 he received a general discharge on 26 April 1985, vice the BCD issued on the same day.

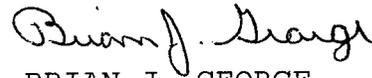
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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 PFEIFFER
Executive director