



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

TJR
Docket No: 4746-09
14 April 2010

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

Subj: REVIEW NAVAL RECORD OF EX [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 member of the Navy, filed enclosure (1) with this Board in which he requested that his record be corrected to show a characterization of service rather than a void enlistment, and that all his rights be restored.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 April 2010 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. Prior to Petitioner's enlistment, specifically, on 23 June 1973, he was convicted by civil authorities of two counts of possession of lysergic acid diethylamide (LSD). Subsequently, on 1 March 1974, he was sentenced to probation for three years.

d. Petitioner enlisted in the Navy on 2 December 1975 at the age of 19 and immediately began a period of active duty. At the time of his enlistment, he had informed military authorities of the foregoing civil conviction, as well as all pre-service civil involvement. He also provided authorities with the complete and proper information regarding his probation. As a result, an investigation was initiated for possible fraudulent enlistment. On 4 February 1976, the investigation had been completed and it was determined that he had not been formally released from probation. In this regard, his probation officer stated, in part, that Petitioner had mentioned his desire to enlist, but the formal paperwork for his release from probation had not been initiated.

e. Petitioner continued to serve without disciplinary incident until 13 May 1976, when he received nonjudicial punishment for a two day period of unauthorized absence.

f. On 2 June 1976 Petitioner's commanding officer recommended his enlistment be voided by reason of erroneous enlistment based on the status of his conditional probation. Shortly thereafter, on 21 June 1976, he was formally released from probation. However, on 13 July 1976, the discharge authority directed the commanding officer to separate Petitioner with a "void enlistment" because it was void at inception due to him being on probation. As a result of this action, on 21 July 1976, after serving for seven months and 19 days, Petitioner's enlistment was voided and he was released from naval jurisdiction.

CONCLUSION:

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

The Board is aware of Petitioner's NJP and does not condone his misconduct. However, the Board's decision is based on his overall record of satisfactory service and the fact that he did not conceal his pre-service civil conviction, and that he was unaware that he had not been "formally" and properly released from his probation. As such, the Board concludes that his void enlistment by reason of release from naval jurisdiction appears to be exceptionally harsh and his naval service should be characterized. In this regard, the Board concludes that because of his minor in-service misconduct and short term of service, a discharge under honorable conditions is more appropriate, less stigmatizing, and now warranted.

Based on the foregoing, the Board concludes that no useful purpose is served by continuing to show that Petitioner's enlistment was void, and that his record should be corrected to reflect that he received a general discharge by reason of convenience of the government due to being enlisted and/or inducted in error. 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 on 21 July 1976 he was issued a general discharge by reason of convenience of the government due to being enlisted/inducted in error (discharge authority: 3850220; separation code: JFC) vice being released from naval jurisdiction.

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 1 May 2009.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)), 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