



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

REC
Docket No: 11019-09
6 August 2010

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

Subj: REVIEW OF NAVAL OF RECORD [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 the characterization of his bad conduct discharge (BCD) of 21 August 1941 be changed.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 August 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. Petitioner enlisted in the Navy on 11 October 1940, at the age of 20. He reported onboard USS NEVADA on 4 January 1941. On 28 April 1941, he was convicted by a summary court-martial (SCM) of gambling for money with cards and dice. He was sentenced to forfeitures of \$144, and confinement for 60 days. On 27 June 1941, he was convicted by a second SCM of gambling for money with dice and seven specifications of loaning money for profit. He was sentenced to forfeitures of \$108, and a BCD.

d. Petitioner was transferred to the USS HENDERSON awaiting review of his BCD. On 12 August 1941, the separation authority approved his BCD.

e. Under current standards, and those prevailing at the time of Petitioner's discharge, his conduct marks were insufficient to merit an honorable discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board notes how minor the offenses were and his honorable intentions and patriotism to his country, and bases its recommendation on his loyalty, and desire to serve his country during a time of war. Accordingly, the Board concludes that as a matter of clemency, relief in the form of a general discharge is appropriate. The Board notes that he did not have a conduct mark average sufficiently high enough to warrant an honorable 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 21 August 1941.

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.

d. That the Department of Veterans Affairs be notified that Petitioner applied to this Board on 22 September 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
By direction