



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

TAL  
Docket No: 812-10  
26 October 2010

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  
(b) SECNAVINST 1910.4B

Encl: (1) DD Form 149 dtd 8Jan10 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 Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his other than honorable (OTH) discharge be upgraded.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 14 October 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 status of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 4 January 1962. During his enlistment, he received nonjudicial punishment (NJP) on three occasions for unauthorized absence from his unit for six days and failure to go to his appointed place of duty.

d. On 13 September 1964, Petitioner was admitted to the Neuropsychiatric Department of the U.S. Naval Hospital, Bethesda, Maryland, and was diagnosed with an emotionally unstable personality. He was brought to the hospital when he became unmanageable after drinking heavily. During a consultation with

a medical provider he admitted to having engaged in homosexual acts. He stated in part that over the past few months he had increasing difficulty controlling an urge to engage in homosexual acts with someone in the barracks.

e. During an investigation by the Office of Naval Intelligence (ONI), Petitioner admitted to participating in homosexual acts and volunteered to take a polygraph examination. The polygraph examination was administered on 1 October 1964; the test indicated that he was truthful when he admitted to having engaged in homosexual acts. On 1 October 1964 Petitioner submitted a written statement in which he admitted to participating in homosexual acts and admitted that he was a homosexual.

f. Subsequently, Petitioner was administratively processed for separation by reason of unfitness due to participation in homosexual acts. The discharge authority directed an OTH discharge and on 12 October 1964 he was so separated. At the time of his separation, his conduct and proficiency marks were high enough, under normal circumstances, to warrant a better characterization of service.

g. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with naval service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under OTH conditions unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or

(7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

CONCLUSION:

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

The Board initially notes Petitioner's participation in homosexual activities, and does not condone his actions. However, the Board concludes that based upon his overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 12 October 1964, the date of his discharge, it would be in the interest of justice to retroactively apply the standards of reference (b) to his case. Using the standards of reference (b), the Board finds that relief in the form of recharacterization is appropriate. The Board further concludes that a general discharge is warranted in this case given his satisfactory conduct and proficiency averages and record of three NJP's.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 12 October 1964 vice the OTH discharge actually 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 14 October 2010.

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 deliberation, 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 Regulations, 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