



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

BAN
Docket No: 04398-10
31 January 2011

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 characterization of service be upgraded from an undesirable discharge (UD) to an honorable characterization of service.

2. The Board, consisting of Messrs. Geberth, Pfeiffer, and Silberman, reviewed Petitioner's allegations of error and injustice on 26 January 2011 and, pursuant to its regulations, determined that the limited 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. Petitioner first enlisted in the Navy on 25 November 1940 and served honorably until 28 October 1946. He reenlisted and served without disciplinary incident until 5 July 1948, when he received nonjudicial punishment (NJP) for being out of uniform. Shortly thereafter, he received the following disciplinary actions: on 3 and 5 September 1948, he received NJP for two specifications of unauthorized absence (UA); on 10 October 1948,

he received NJP for UA; on 21 October 1948, he received NJP for UA; and on 17 June 1949, he was convicted at a summary court-martial of (SCM) failure to report an accident. In addition, on 20 September 1949, while on authorized liberty, he was arrested by civil authorities in Ventura, California, for drunk driving. He was found guilty, fined, and sentenced to 120 days in a civilian jail. He was notified that he was being administratively separated due to his frequent involvement of a discreditable nature and recommended for a UD. He waived all procedural rights. Therefore, on 21 October 1949, he was separated with a UD and was not recommended for reenlistment. He received the Purple Heart medal for being wounded during World War II.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Although he received four NJP's and a SCM, the Board particularly notes that he served in World War II and received a Purple Heart medal. The Board believes that clemency is warranted due to his injuries and his prior honorable service. Therefore, the Board concludes that his characterization of separation should be upgraded from a UD to general discharge. In view of the above, the Board recommends the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received a general discharge vice the UD on 21 October 1949 now of record.

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 no further relief be granted.

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