



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

REC
Docket No: 06595-10
4 April 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
(b) SECNAVINST 1910.4A

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 Navy, filed enclosure (1) with this Board requesting, in effect, that her general characterization of service which she received on 24 September 1990, be upgraded.

2. The Board, consisting of Ms. Henkel, Ms. Countryman, and Mr. Butherus, reviewed Petitioner's allegations of error and injustice on 30 March 2011 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. Although 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.

b. Petitioner enlisted in the Navy on 31 May 1989, and began a period of active duty on 14 November 1989. Apparently, during her period of training, she discovered that she had feelings for a fellow female Sailor. She was assigned aboard the USS HUNLEY for duty, and received numerous telephone calls informing her that an investigation was being conducted. She was informed that her name had been brought up for being a homosexual and that she should turn herself in. She disclosed her homosexuality to the Master-at-Arms and was administratively separated on 24 September 1990 with a type warranted by service record characterization general discharge.

c. Petitioner's record contained performance evaluations with an overall trait mark average of 3.2. A 3.0 overall trait average was required for an honorable discharge.

d. 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 conditions other than honorable 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.

That portion of reference (b) pertaining to separation due to fraudulent enlistment states that if an individual so enlists by concealing pre-service homosexual behavior, the forgoing standards will apply to the characterization of service.

e. Petitioner's military records fail to disclose the presence of any of the aggravating circumstances which would warrant the issuance of an other than honorable or general discharge under the provisions of reference (b).

CONCLUSION:

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

Based upon Petitioner's 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 24 September 1990, the date of her discharge, the Board concludes that it would be in the interest of justice to retroactively apply the standards of reference (b) to her case. Using the standards of reference (b), the Board finds that relief in the form of recharacterization is appropriate. The Board further concludes that an honorable discharge is warranted in this case.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was issued a honorable discharge on 24 September 1990, vice the general 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 Veterans Administration be informed that Petitioner's application was received by the Board on 18 June 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 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