



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

TAL  
Docket No: 3294-12  
25 February 2013

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) 10 U.S.C. 654 (Repeal)

Encl: (1) DD Form 149 dtd 17 Feb 2012 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 Reserve filed enclosure (1) with this Board requesting, in effect, that his undesirable discharge (UD) be upgraded to honorable. He was discharged on 5 December 1944. By implication, he further requested that his reason for separation, unfitness (homosexuality), be changed.

2. The Board, consisting of Mr. Pfeiffer, Mr. Zsalman, and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 21 February 2013 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. 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 Reserve and began a period of active duty on 11 May 1943 at age 20. He received nonjudicial punishment (NJP) on one occasion for failure to obey a lawful order. The sentence imposed was reduction in rate, which was suspended for six months.

d. On 23 October 1944, Petitioner, while the subject of a psychiatric evaluation at his own request, made a voluntary statement, stating in part that, he allowed a white civilian man to perform fellatio on him about six times and felt guilty. On 4 November 1944, he submitted a written statement stating in part that, he had become very nervous, despondent, and physically disturbed. He further stated he felt it would be very difficult to remain in the service.

e. On 7 November 1944, he was notified of pending administrative discharge processing with a UD due to unfitness (homosexuality). The discharge authority approved and directed an UD discharge due to unfitness (homosexuality). On 5 December 1944 he was so separated. At the time of his separation, his conduct mark average was 3.25, high enough to warrant an honorable characterization of service.

f. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for correction of military records following the "don't ask, don't tell" (DADT) repeal of 10 U.S.C. 654. It provides service Discharge Review Boards with the authority to grant requests to change the narrative reason for discharge to "Secretarial Authority", when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action based upon his overall record of service, despite his NJP, and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 5 December 1944, the date of his discharge. The Board believes 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 an honorable discharge is warranted in this case given his conduct mark average. In view of the above, the Board directs the following relief.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge on 5 December 1944 vice the UD discharge actually issued on that date and that the narrative reason for separation was "Secretarial Authority" vice "Article C-10311, BuPers Manual-253" BuPers Letter Pers 651-dmk/WMM836 44 40 of 16 November 1944. Petitioner's Certificate of Discharge or Release from Active Duty (DD Form 214) does not contain an assigned Separation Program Designator (SPD) code or reentry code.

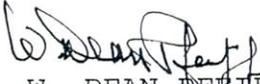
b. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 22 March 2012.

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