



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

TJR  
Docket No: 7367-12  
9 May 2013

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

Subj: REVIEW 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, filed enclosure (1) with this Board requesting that the narrative reason for separation be changed.

2. The Board, consisting of Ms. Barrow, Mr. Blanchard, and Ms. Wilcher, reviewed Petitioner's allegations of error and injustice on 7 May 2013 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. Enclosures (2) and (3) apply.

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 at age 17 and began a period of active duty on 6 July 1946. He served for nearly two years without disciplinary incident and was advanced to the rate of AN/(E-3).

d. On 27 April 1948 Petitioner was convicted by civil authorities of burglary and sentenced to confinement for 90 days and probation for five years. Subsequently, he was processed for separation by reason of misconduct due to civil conviction, and on 14 August 1948, he was issued an undesirable discharge by reason of misconduct due to civil conviction.

e. On 7 November 1988 civil authorities set aside the foregoing conviction and dismissed the charge of burglary. As a result, his record was expunged of all criminal activity.

f. On 7 August 1991 the Assistant Secretary of the Navy (ASN) determined that it was unjust to continue to characterize Petitioner's service as undesirable because civil authorities set aside the felony conviction and dismissed the charge of burglary. As such, ASN directed the recharacterization of Petitioner's undesirable discharge. In this regard, Petitioner's record was changed to reflect that on 14 August 1948 he was honorably discharged by reason of misconduct due to civil conviction.

g. In Petitioner's application, he states that he would like the narrative reason for separation changed now that his character of service has been upgraded and his civil record has been expunged of all criminal activity. Also, a telephonic report from the Federal Bureau of Investigation confirms Petitioner's good post service conduct.

#### CONCLUSION:

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

The Board is aware of Petitioner's disciplinary infraction in the civil community and does not condone his misconduct. However, the Board concludes that the civil charge for which Petitioner was convicted has since been dismissed and expunged from his record. Further, the Board is also aware that ASN, based on the foregoing actions of the civil authorities, changed the characterization of Petitioner's service to honorable. In this regard, the Board concludes that at the time of this change, it was presumably an oversight that the narrative reason for separation was not also changed. With that being said, the Board concludes that a change of the narrative reason for separation should now be based on Petitioner's overall satisfactory post-service conduct, the expunging of his civil record, and the ASN decision to change his characterization of service.

Based on the foregoing, the Board concludes that no useful purpose is served by continuing to have Petitioner's record reflect a narrative reason for separation as "misconduct due to

civil conviction" and as such, should be changed to reflect a nonstigmatizing narrative reason for separation. In this regard, the Board concludes that it is now more appropriate that the narrative reason for separation be changed to "best interest of the service."

In view of the foregoing, the Board finds the existence of an error and injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of best interest of the service (Secretarial Plenary Authority) on 19 August 1948 vice by reason of misconduct due to civil conviction on the same day.

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 28 June 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 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