



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

BJG
Docket No: 1856-13
2 December 2013

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 29 Jan 13 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that her naval record be corrected by showing that on 31 October 1994, she was issued an honorable characterization of service vice the other than honorable (OTH) discharge of record.

2. The Board, consisting of Mses. Barrow and Zivnuska and Mr. Midboe, reviewed Petitioner's allegations of error and injustice on 26 November 2013. The majority of the Board, Ms. Barrow and Mr. Midboe, voted for partial relief. The minority member of the Board, Ms. Zivnuska, denied the application. 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 which were 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 and entered active duty on 14 August 1990. Her record is incomplete, but she served satisfactorily until 3 February 1994, when she entered a period of unauthorized absence (UA), which did not end until 19 September 1994, a period of 216 days. It appears that she requested a discharge OTH conditions for the good of the service to avoid trial by court-martial for the period of UA totaling 216 days. Prior to submitting this request, she would have consulted with qualified military counsel and acknowledged the adverse consequences of receiving such a discharge. The separation authority approved her request for a discharge under OTH conditions. On 31 October 1994, she was separated with a discharge under OTH conditions for the good of the service to avoid trial by court-martial. As a result of this action, she was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

d. Petitioner now alleges that she was sexually assaulted in 1991, and this is why she entered the period of UA in 1994. She admits that she did not report the assault to authorities at the time of the alleged offense.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority of the Board finds an injustice warranting partial approval of Petitioner's request. The majority particularly notes that she requested a good of the service discharge to avoid trial by court-martial for a 216 day period of UA and does not condone the misconduct. However, the majority believes that she was raped, even though she did not report it at the time. The majority concludes that the traumatic event eventually caused her to enter the lengthy period of UA. The majority finds that a fully honorable characterization of service is not warranted in this case because of her misconduct. However, the majority concludes that based upon her overall record of service, relief in the form of a general characterization of service is appropriate.

In view of the above, the majority recommends the following limited corrective action:

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 31 October 1994, she was issued a general under honorable conditions characterization of service vice the OTH discharge of record.

b. That nor further relief be granted.

c. 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 be added to the record in the future.

d. 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.

MINORITY CONCLUSION:

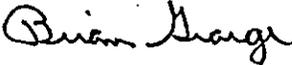
The minority recommends that no relief be granted. The minority bases this recommendation upon Petitioner's lengthy period of UA and request for discharge to avoid trial by court-martial. The minority particularly notes that she did not report the alleged sexual assault at the time it occurred, and is just now stating that it caused her to enter a lengthy period of UA. Accordingly, the minority's recommendation is as follows:

MINORITY RECOMMENDATION:

a. That Petitioner's application be denied.

4. 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. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

RW
MAJORITY REPORT

Reviewed and approved: 4/14/14

Robert L. Woods

ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000

~~MINORITY REPORT:~~

~~Reviewed and approved: _____~~