



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

SJN
Docket No: 02430-13
27 February 2014

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 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 that his other than honorable (OTH) characterization of his service be changed per reference (b). He also impliedly requested that his narrative reason for separation "fraudulent enlistment" be changed.

2. The Board, consisting of Ms. Lapinski, Ms. Wilcher, and Mr. Hedrick, reviewed Petitioner's allegations of error and injustice on 25 February 2014, 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. 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.

c. Petitioner enlisted in the Navy and began a period of active duty on 7 November 1967. On 14 July 1968, a medical entry states he was admitted for attempted suicide after ingesting approximately 30 Excedrin tablets. At that time, he stated, in

part, that he felt dissatisfied and disliked the Navy. He was worried about his parents and wanted to return home to take care of their needs. Additionally, he voluntarily stated that he was bisexual with homosexual tendencies, smoked marijuana, and was involved in homosexual activities prior to entering the service. It was further determined that he failed to disclose this information during his recruiting process. As a result of his failure to disclose this information, his commanding officer initiated administrative discharge action by reason of misconduct due to fraudulent entry, as evidenced by his concealment of pre-service homosexuality and wrongful drug use. After being afforded all of his procedural rights, he elected to have his case heard before an administrative discharge board (ADB). On 9 September 1968, the ADB recommended separation with an OTH discharge by reason of misconduct due to fraudulent enlistment. On 21 November 1968, his commanding officer (CO) concurred with the ADB's findings and forwarded his recommendation that he be discharged. The CO stated, in part, that he had perpetrated a fraudulent enlistment by deliberately concealing his sexuality and wrongful drug use on his Fraudulent Enlistment Warning form (NAVPERS 1130/2), which, except for such concealment, would have resulted in his rejection to serve. On 4 December 1968, the separation authority directed an OTH discharge by reason of misconduct due to fraudulent enlistment. He was so discharged on 18 December 1968.

d. Characterization of service is based in part on conduct marks assigned on a periodic basis. His conduct average was 3.2. At the time of his service, a conduct average of 3.0 was required for a fully honorable characterization of service.

e. In his application, Petitioner states that since the enactment of reference (b), homosexual conduct is no longer considered a relevant factor for entry in to the armed forces.

f. Under 10 United States Code (U.S.C.) 654 (Repeal), the Board can grant a request to upgrade a discharge based on homosexuality when two conditions are met: (1) the original discharge was based solely on "don't ask don't tell" (DADT) or similar policy in place prior to enactment of DADT and (2) there were no aggravating factors such as misconduct.

CONCLUSION:

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

In this regard, the Board notes Petitioner's youth, time in service, and after careful and conscientious consideration of his record, concludes that even though the OTH discharge was proper as issued based on his failure to conceal his preservice homosexual conduct and wrongful drug use, he most likely would have ultimately been administratively separated due to his attempted suicide by ingesting approximately 30 Excedrin tablets and diagnosed medical issues. At the time of his discharge, his overall trait average was high enough for an honorable characterization of service. In view of the foregoing, the Board recommends the following corrective action:

RECOMMENDATION:

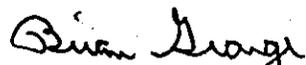
a. That Petitioner's naval record be corrected to show that the narrative reason for separation was "secretarial authority" vice "fraudulent enlistment", and that his characterization of service is honorable vice the OTH discharge actually issued on 18 December 1968.

b. That a copy of this report of proceedings be filed in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 26 February 2013.

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.


ROBERT D. ZSALMAN
Acting Executive Director