



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

TAL
Docket No: 404-13
17 October 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
(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 Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his other than honorable (OTH) discharge issued on 24 May 1963 due to unfitness be upgraded to an honorable discharge. By implication, he further requested that his narrative reason for separation (Unfitness) be changed to "Secretarial Authority".

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Exnicios, reviewed Petitioner's allegations of error and injustice on 17 October 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 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 Marine Corps and began a period of active duty on 15 June 1962. On 6 March 1963, he received nonjudicial punishment (NJP) for failure to go to his appointed place of duty, conduct prejudicial to good order and discipline by urinating on the deck beside his rack and dereliction in the performance of his duties.

d. On 28 March 1963, Petitioner, while being investigated by the Provost Marshal, he made a verbal and written admission of involvement in homosexual activities with two civilians. Subsequently, he was administratively processed for separation by reason of unfitness (sodomy). His commanding officer forwarded his case and the separation authority directed an OTH discharge due to unfitness. He was so discharged on 24 May 1963.

e. Characterization of service is based in part on conduct marks assigned on a periodic basis. His conduct average was 3.8. At the time of his service, a conduct average of 4.0 was required for a fully honorable characterization of service when being discharged due to convenience of the government.

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", and to re-characterize the discharge to honorable, 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, and especially in light of reference (b), the Board concludes that Petitioner's request warrants partial favorable action in the form of relief to a general characterization of service in this case given his insufficiently high conduct mark average and record of one NJP. The narrative reason should be changed to "Secretarial Authority". In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that his characterization of service be upgraded to general vice OTH, and his narrative reason for separation was "Secretarial

Authority" vice "Unfitness". Additionally, that he be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

b. That no further relief be granted.

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

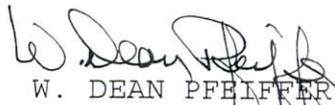
d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 7 January 2013.

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.


W. DEAN PFEIFFER
Executive director