



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

SJN  
Docket No: 5497-13  
10 July 2014

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

Subj: REVIEW NAVAL RECORD ICO [REDACTED]  
[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, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting a change of this other than honorable (OTH) discharge received on 21 September 1995 to a general under honorable conditions.

2. The Board, consisting of Mr. Clemmons, Mr. Zsalman, and Mr. Marquez, reviewed Petitioner's allegations of error and injustice on 8 July 2014 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.

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 16 November 1993. On 27 January 1995, he was counseled regarding avoiding a working party and climbing through life lines on the fantail of his ship feigning jumping overboard.

He was warned that further misconduct could result in administrative discharge action. On 21 April 1995, he received nonjudicial punishment (NJP) for jumping from his ship into the water, disobedience, and misbehavior of a sentinel. He received a forfeiture of pay, a reduction in paygrade, and three days on bread and water. Subsequently, administrative discharge action was initiated by reason of misconduct due to commission of a serious offense. He elected to consult counsel and have his case heard before an administrative discharge board (ADB). On 5 July 1995, the ADB found that he had committed misconduct and recommended that he be separated with an OTH discharge. On 26 July 1985, his commanding officer concurred with the ADB's findings and forwarded his recommendation that he receive an OTH discharge. On 15 September 1995, the separation authority concurred and directed an OTH discharge by reason of misconduct due to commission of a serious offense. He was so discharged on 21 September 1995.

d. With his application, Petitioner states, in part, that his only misconduct was diving off his ship on a dare, and although it was not a commendable thing to do, he does not feel he deserves an OTH discharge. Additionally, he is seeking assistance through a Retraining Assistance Program offered through the Department of Veterans Affairs.

#### CONCLUSION:

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

The Board concludes that based on the relatively minor nature of his offenses as well as his youth at the time of these offenses, the record should reflect a general characterization of service as an act of clemency. In view of the foregoing, the Board recommends the following corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 21 September 1995, he received a general discharge vice the OTH discharge actually issued on that date.

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 27 May 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