



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

BJG
Docket No: 7164-13
30 July 2014

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) SECNAVINST 1910.4B
(c) 10 U.S.C. 654 (Repeal)

Encl: (1) DD Form 149 dtd 6 Jun 13 w/attachments
(2) 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, in effect, that his reason and authority for separation (unfitness - homosexual acts) be changed. He further requested that his undesirable characterization of service issued on 4 December 1959 be changed to honorable.

2. The Board, consisting of Messrs. Bey, Boyd, and Zsalman, reviewed Petitioner's allegations of error and injustice on 29 July 2014 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 Navy and began a period of active duty on 3 January 1957. He was not the subject of any disciplinary action and promoted in due course to pay grade E-4. He then admitted he had participated in homosexual acts with civilians off base and Sailors aboard a Naval vessel. His commanding officer forwarded his case recommending an undesirable characterization of service due to unfitness (homosexual acts). The separation authority directed an undesirable characterization of service discharge due to unfitness (homosexual acts). He was so discharged on 4 December 1959.

d. Reference (b) sets forth the Department of the Navy's policies, standards, and procedures for administratively separating enlisted service members due to homosexuality. Reference (c) sets forth the Department of the Navy's 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 also provides service discharge review boards with the authority to grant requests to change the narrative reason for separation to "Secretarial Authority" 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 (c), the Board concludes that Petitioner's request warrants favorable action in the form of limited relief.

The Board concludes that based upon his overall record of service and the Navy's policy as established in reference (c), that a fully honorable discharge is not warranted in light of the aggravation in this case, homosexual acts aboard a Naval vessel. However, as a matter of clemency, his undesirable characterization of service should be upgraded to general under honorable conditions. The Board further finds that his reason and authority for separation 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 the reason and authority for separation is "Secretarial Authority" vice unfitness (homosexual acts), and his undesirable

characterization of service be changed to general under honorable conditions, which were issued on 4 December 1959.

b. That no 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 or material 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.

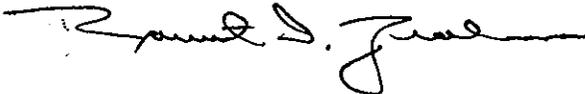
e. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 17 July 2013.

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