



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

BJG
Docket No: 9136-14
18 September 2014

From: Chairman, Board for Correction of Naval Records
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 9 Jan 14 w/attachs

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 his naval record be corrected by changing the characterization of his other than honorable (OTH) conditions e discharge issued on 23 July 2010 to honorable. He further requested that his separation authority of "Military Personnel Manual (MILPERSMAN) 1910-142" (misconduct), separation code of "GKL" (misconduct), reentry code of "RE-4" (not recommended for retention), and narrative reason for separation "misconduct (sexual perversion)" be changed. By implication, he requested that his general court-martial (GCM) conviction of 26 March 2010 be removed. Finally, he requested that the Navy Criminal Investigative Service (NCIS) records be corrected by removing references to his GCM. The Board did not consider his final request, as it does not have authority to correct NCIS records.

2. The Board, consisting of Messrs. Boyd and Tew and Ms. Henkel, reviewed allegations of error and injustice on 17 September 2014, and pursuant to its regulations, determined that relief should be granted. 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. Petitioner entered active duty in the Navy on 2 April 2008. On 26 March 2010, he was convicted by GCM of having sexual intercourse with an incapacitated female Sailor (sexual perversion). He was sentenced to a forfeiture of \$724.00 for two months, reduction in pay grade from E-3 to E-1, and 90 days OF confinement at hard labor. He was then notified that his command was initiating administrative separation processing due to misconduct. He elected to have his case heard by an administrative discharge board (ADB). The ADB found that based upon his GCM conviction, he committed misconduct and recommended an OTH characterization of service. On 23 July 2010, he received the OTH characterization of service due to misconduct (sexual perversion), and was assigned an RE-4 reentry code.

c. During appellate review, the Commander, Navy Region, Mid-Atlantic, determined that the military judge at Petitioner's GCM committed prejudicial error by excluding exculpatory evidence that may have shown that the victim of the assault consented. As a result of this prejudicial error, the findings of guilty and the sentence were disapproved. The charge and specification were withdrawn and dismissed without prejudice.

CONCLUSION:

Upon review and consideration of all the evidence of record, especially in light of Petitioner's GCM conviction being dismissed during appellate review, the Board finds the existence of an error and injustice warranting upgrading Petitioner's OTH discharge to an honorable characterization of service. The Board particularly notes that his ADB's finding and recommendation were based upon it. The Board concludes that since he had no other disciplinary action, he is qualified for a fully honorable discharge. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 23 July 2010, he was issued an honorable discharge, vice the OTH conditions characterization of service assigned on the same date.

b. That Petitioner's record be further corrected by changing his separation authority from "MILPERMAN 1910-142" to "MILPERSMAN", separation code from "GKL" to "JFF" (secretarial

authority), reentry code from "RE-4" to "RE-1" (recommended for retention), and narrative reason for separation from "misconduct (sexual perversion)" to "secretarial authority". The time lost from 26 March to 6 June 2010 (confinement) will be removed. This is to be accomplished by issuing a new Certificate of Release or Discharge from Active Duty (DD Form 214).

c. That Petitioner's record be further corrected by removing all references to his GCM conviction of 26 March 2010. This shall include setting aside the sentence of his reduction from pay grade E-3 to E-1 and reimbursing him the forfeiture of \$724.00 for two months. His confinement from 26 March to 6 June 2010 will no longer be considered time lost, so he is entitled to full pay and allowances.

d. 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.

e. 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.

f. That the Department of Veterans Affairs be informed that Petitioner applied to this Board on 22 April 2014.

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.



BRIAN J. GEORGE
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 Regulations, 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.

A handwritten signature in black ink, appearing to read "R. J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL
Executive Director