



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 1412-01
5 July 2001

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

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 United States Navy, filed enclosure (1) with this Board requesting that his general discharge be upgraded to an honorable discharge.

2. The Board, consisting of Ms. Hare, Mr. Harrison, and Mr. Mazza, reviewed Petitioner's allegations of error and injustice on 26 June 2001 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 10 May 1994. During his service, he was not the subject of any disciplinary action. During the early part of his enlistment his conduct and overall trait averages under the old performance evaluation system were both 3.8. Conduct and overall trait averages of 3.0 and 2.8 were sufficient to warrant a fully honorable characterization of service under this system. Under the new performance evaluation system, Petitioner received a final overall trait average of 2.81, which exceeded the 2.0 average required for a fully honorable characterization of service.

d. On 19 June 1997 Petitioner admitted that he was bisexual and further stated that he had participated in homosexual acts. Subsequently, he was processed for an administrative separation by reason of homosexuality due to his admission. After he waived his procedural rights, on 20 June 1997 the commanding officer recommended a general discharge. On 18 July 1997, by message to Petitioner's command, the separation authority directed discharge with the characterization to be "based on service record review." On 24 July 1997 Petitioner was issued a general discharge by reason of "homosexual conduct admission."

e. Reference (b) sets forth the policies, standards, and procedures for administratively separating enlisted servicemembers. As it pertains to Petitioner's case, the reference states that individuals separated for homosexuality will receive either an honorable or general discharge, based on his or her total performance of duty and conduct. In this regard, the average marks are one factor to be considered, but they are not determinative. If an individual's discharge is deemed warranted, reference (b) states that the separation authority must assign a characterization of service.

CONCLUSION:

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

The Board initially notes Petitioner's overall satisfactory record of service for more than three years, and is especially aware that he served without any disciplinary infractions and his average marks were satisfactory to above average. The Board is also aware that, in accordance with current regulations, an individual who is discharged by reason of homosexuality should receive the characterization of service warranted by his or her service record. Given Petitioner's length of service, good performance and unblemished record, the Board believes that an honorable discharge is the characterization warranted by his service record. Along these lines, the Board is aware that Petitioner's final mark averages do not compel an honorable characterization of service, but also concludes there is no good reason to depart from the marks in this case.

The Board also tangentially notes that the separation authority essentially delegated the decision on the characterization of Petitioner's service to his command. The Board believes that in so doing, the separation authority abrogated its responsibility under reference (b) to assign the appropriate characterization of service.

Based on the foregoing, the Board finds that relief in the form of recharacterization is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an honorable discharge on 24 July 1997 vice the general 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 Veterans Administration be informed that Petitioner's application was received by the Board on 22 February 2001.

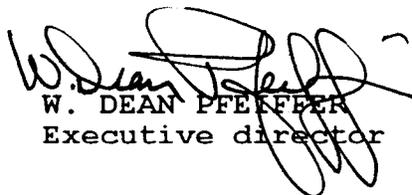
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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