



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

TRG
Docket No: 2189-00
20 June 2000

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(2) 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 record be corrected to show a better characterization of service than the discharge under other than honorable conditions issued on 26 January 1993.

2. The Board, consisting of Ms. McCormick, Ms. Wiley and Mr. Leeman, reviewed Petitioner's allegations of error and injustice on 12 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. Although it appears that Petitioner's application 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 on 9 October 1990 at age 19. The record shows that he served without incident until 13 November 1992. On that date he received nonjudicial punishment (NJP) for an unauthorized absence of about two days and disobedience of orders to move back into the barracks and to stop his involvement with another servicemember's wife. The punishment imposed included a reduction in rate from CMCN (E-3) to CMCA (E-2). On 25 November 1992 he was diagnosed with a

passive-aggressive personality disorder and was recommended for an administrative discharge for that reason.

d. On 3 December 1992, Petitioner was notified of discharge processing due to the diagnosed personality disorder and misconduct due to commission of a serious offense, specifically, the two instances of disobedience for which he received NJP. In connection with this processing, he elected to waive his right to have his case heard by an administrative discharge board.

e. In his recommended for discharge, the commanding officer stated, in part, as follows:

(Petitioner) has no potential for further useful naval service. Soon after reported aboard (he) began a relationship with another battalion member's wife while that battalion member was deployed Upon his return the battalion member ... complained to the chain of command that (Petitioner) was living with his lawful wife and (he) wanted this to stop. (Petitioner) was counseled concerning this relationship and was issued a lawful order ... to move back into the barracks, and to cease having such a relationship until such time as they were legally separated or divorced, as this conduct was prejudicial to the good order and discipline of the battalion. (He) understood the orders and the reason behind them, but willfully failed to obey these orders. He did not move back into the barracks, continued his relationship with the wife, and even went so far as to arrive for morning quarters with her. This type of behavior cannot be tolerated While in restriction, he became very depressed and expressed suicidal ideations. The Chief, Inpatient Psychiatry, diagnosed (him) as having a personality disorder of such severity that if he continued in the U. S. Navy he is likely to behave in a manner to harm someone or himself, or develop serious mental problems. I believe (Petitioner), although diagnosed with a personality disorder, should be held accountable for his actions. He willfully failed to obey two lawful orders.

On 11 December 1992, the discharge authority directed discharge under other than honorable conditions by reason of misconduct. Petitioner was so discharged on 26 January 1993.

f. Petitioner states in his application that he has since married the woman he was living with, she was legally separated

at the time, and her husband only complained about their relationship to get him in trouble. He has provided a copy of his wife's divorce decree, dated 7 December 1992, which does not mention that she was legally separated. However, the decree states that they were "finally separated" on 1 September 1992. In a statement accompanying the application, Petitioner's wife states that she did not meet him until October 1992.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board finds that whatever the status of the separation, Petitioner was required to obey orders, he was properly punished for his disobedience, and this misconduct was sufficient to support discharge processing. However, the Board also notes that Petitioner's wife and her ex-husband were separated, in fact, on 1 September 1992. Accordingly, the Board believes that by that time, the marriage was irretrievably broken. The Board concludes, that in retrospect, a discharge under other than honorable conditions is inappropriate and the discharge should now be recharacterized to general.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 26 January 1993 he was issued a general discharge by reason of misconduct vice the discharge under other than honorable conditions actually issued on that date.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
- c. That the Department of Veterans Affairs be informed upon request that Petitioner's application was received by the Board on 27 March 2000.
- 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 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.



W. DEAN PFEIFFER
Executive Director