



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

WMP
Docket No. 3353-02
6 September 2002

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

Encl: (1) DD Form 149 w/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, applied to this Board requesting, in effect, that his discharge be upgraded.

2. The Board, consisting of Messrs. Zsalman, Pfeiffer, and Pauling, reviewed Petitioner's allegations of error and injustice on 28 August 2002 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 to the Board 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 14 September 1987 at age 18. He served without incident until 7 January 1992, when he received nonjudicial punishment (NJP) for six instances of failure to be at his appointed place of duty. Punishment imposed was a forfeiture of \$100 per month for two months and a suspended reduction to paygrade E-3.

d. At an alcohol dependency evaluation of 23 January 1992, Petitioner was found to be alcohol dependent and recommended for level III alcohol treatment. He began treatment on 1 April 1992.

e. On 13 April 1992, while attending level III alcohol rehabilitation treatment, Petitioner received NJP for failure to be at his appointed place of duty and disobeying a lawful order from a petty officer. Punishment imposed was forfeiture of \$100 per month for two months and a suspended reduction to paygrade E-2. Prior to this NJP, the previously suspended punishment from the NJP of 7 January 1992 was vacated he was reduced to paygrade E-3. Further, Petitioner was notified on 30 April 1992 that his level III alcohol treatment was being terminated, and he was returned to his unit.

f. Petitioner was notified on 2 June 1992 that administrative separation action was being initiated by reason of misconduct due to commission of a serious offense and alcohol rehabilitation failure. He was advised of and retained all procedural rights, acknowledged that he had a minimum of two working days and a maximum of eight working days to return his statement of awareness, and that failure to do so within the specified period would constitute a waiver of his procedural rights. Petitioner elected an administrative discharge board, but failed to return statement of awareness until 15 June 1992. On that date, he was advised that he had waived his procedural rights due to the untimely return of the statement of awareness.

g. On 23 June 1992, the commanding officer forwarded a recommendation for discharge under other than honorable conditions by reason of misconduct due to the commission of a serious offense and alcohol rehabilitation failure to the Bureau of Naval Personnel (BUPERS), which directed discharge on 1 August 1992.

h. On 4 August 1992, Petitioner was offered in-patient alcohol rehabilitation treatment at a Veterans Administration (VA) hospital prior to his discharge. However, he declined this treatment.

i. On 14 August 1992 Petitioner was discharged under other than honorable conditions by reason of the commission of a serious offense and was assigned an RE-4 reenlistment code. At that time, his conduct and proficiency averages of 3.57 and 3.56 respectively would have qualified him for an honorable discharge, had he not been discharged due to misconduct.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board now finds the existence of an injustice warranting corrective action. The Board believes that, although Petitioner qualified for discharge due to the commission of a serious offense and alcohol rehabilitation failure, the assignment of an other than honorable discharge for his offenses was unduly harsh. In this regard, Petitioner served over four years of his six-year enlistment, as extended without any instances of misconduct. The Board also notes the minor nature of his first nonjudicial punishment and the fact that his conduct and proficiency averages would normally have qualified him for an honorable discharge. Accordingly, the Board concludes that a general discharge is more appropriate than an other than honorable discharge, concludes that relief in the form of recharacterization is appropriate.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the record to show that he was issued a general discharge on 14 August 1992 vice the other than honorable discharge actually issued on that date.

b. That 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 by the Board on 5 April 2002.

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.


For W. DEAN PFEIFFER
Executive Director