



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

ELP
Docket No. 3925-00
12 February 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 naval record be corrected by upgrading the other than honorable discharge issued on 5 November 1990.

2. The Board, consisting of Messrs. Leeman, Rothlein, and Ivins, reviewed Petitioner's allegations of error and injustice on 6 February 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 23 June 1988 for four years at age 18. The record reflects that he completed Mess Management Specialist "A" school and was assigned to the USS GUADALCANAL (LPH 7) on 25 November 1988.

d. Petitioner was advanced to MSSN (E-3) and served without incident until 23 March 1990, when he received nonjudicial punishment (NJP) for disrespect, disobedience of an order, and communicating a threat. Punishment imposed consisted of a reduction in rate to MSSA (E-2), a suspended forfeiture of \$100, and 30 days of restriction and extra duty.

e. On 21 October 1990 Petitioner was convicted by summary court-martial of two specifications of disrespect towards an officer, nine specifications of disrespect towards a petty officer, and failure to obey a lawful order. He was sentenced to confinement at hard labor for 30 days, a forfeiture of \$482, and reduction in rate to MSSR (E-1).

f. On the same day, Petitioner was also notified that he was being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. He was advised of his procedural rights, declined to consult with counsel, and waived the right to present his case to an administrative discharge board (ADB).

g. On 29 October 1990 the commanding officer (CO) recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. In his recommendation, the CO stated as follows:

This man is unfit for further Naval service. He has stated he will do whatever necessary to leave the Navy and his burgeoning disciplinary record evidences this. He openly flaunts military authority and his conduct borders on violence. He is a major irritant to his division, this ship and the Navy and should be removed expeditiously. Furthermore, he is totally unproductive and requires constant supervision to ensure he completes any task. His continued presence on board this ship is detrimental to command morale and the maintenance of good order and discipline.

h. On 30 October 1990 the Commander, Naval Military Personnel Command directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. Petitioner was so discharged on 5 November 1990.

i. Medical records obtained from the Department of Veterans Affairs (DVA) indicate that on 28 May 1991, the DVA considered a claim filed by Petitioner, apparently for treatment. However, the particulars of that claim were not part of the records provided by the DVA. The DVA noted that Petitioner had been discharged under other than honorable conditions and the offenses which led to his discharge. It also noted that there was no available evidence that Petitioner could not distinguish right from wrong or that he was not conscious of his acts. It appears that the DVA concluded that his discharge was issued under circumstances that prohibited the payment of benefits administered by the DVA. Medical records do show he was admitted to a VA hospital for evaluation and treatment of psychotic symptoms on 30 January 1993, and was diagnosed with paranoid schizophrenia.

j. On 22 February 1993, the Navy Discharge Review Board denied Petitioner's request for recharacterization of his discharge.

k. On 11 February 1998 this Board denied Petitioner's application for an upgrade of his discharge. His application for reconsideration was accepted based on medical records not previously available to the Board.

l. Petitioner now provides statements from individuals acquainted with his family who witnessed the deterioration of his mental state subsequent to discharge, and state that his behavior was far different at the time of discharge than at the time of enlistment. He provides hospital records of six hospitalizations during 1998 and 1999 for treatment of his diagnosed schizophrenia. The latest psychiatric evaluation, on 8 November 1999, noted that Petitioner was admitted to a VA hospital for treatment of psychotic symptoms in 1990. However, records provided by the DVA contain no documentation of this treatment. Counsel has requested this documentation, but apparently Petitioner is unable to comply or unable to obtain

this documentation from the DVA. Counsel contends that Petitioner was schizophrenic at the time of service and that it mitigates the misconduct which led to his discharge.

m. At enclosure (2), an advisory opinion by the Department of Psychiatry, Naval Medical Center, Portsmouth, VA states the available medical documentation provides no objective medical evidence of a psychiatric illness until Petitioner's first hospitalization in January 1993, more than two years after his discharge. Had he been hospitalized or treated by a psychiatrist within a short period of time after discharge this would suggest that his illness existed prior to separation. The advisory opinion also states that although there were no psychiatric evaluations in his medical record during his enlistment, the pattern of behavior described by the commanding officer in the discharge paperwork could be considered consistent with Petitioner's current diagnosis and behavior. However, the opinion concludes that insufficient evidence exists, to justify a diagnosis of service-connect schizophrenia.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that he was advanced to MSSN and served for 21 months before his first NJP, and there was a seven month interval between the first and second NJP. Additionally, his offenses were relatively minor.

DVA records indicate that he filed a claim for treatment sometime during the latter part of 1990 or early 1991. The Board believes that had Petitioner responded to the DVA's due process letter in January 1991, there might well have been sufficient evidence to conclude that his schizophrenia existed prior to service. However, his failure to respond is not unusual for individuals suffering from a psychosis. In this regard, the Board notes the statement in the advisory opinion to the effect that in the discharge paperwork, the Petitioner's commanding officer described a pattern of behavior that could be considered consistent with schizophrenia. The Board is aware that schizophrenia may develop slowly over time, and Petitioner may have been suffering in the early stages of that disease toward the end of his service, as evidenced by his disciplinary record during this period. Since there is evidence that

Petitioner tried to obtain treatment through the VA in late the 1990 or early 1991, it is not unreasonable for the Board conclude that he would have been so diagnosed had he followed through. Therefore, it is also reasonable to believe that his disorder mitigates the misconduct which led to his discharge.

Although the advisory opinion concludes that insufficient evidence exists for a diagnosis of service-connected schizophrenia, Petitioner is not seeking physical disability retirement for which such a finding would be required. All he is seeking is an upgraded discharge, and the Board believes such action is appropriate since he was most probably suffering from the very early stages of this disease. Given the existence of this mitigating factor, along with his period of good service, the Board concludes that it would be appropriate and just to recharacterize the other than honorable discharge to a general discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the record to show that he was issued a general discharge on 5 November 1990 by reason of misconduct vice the discharge under other than honorable conditions actually issued on that date. This should include the issuance of a new DD Form 214.

b. That this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the DVA be informed that Petitioner's application was received by the Board on 27 April 2000.

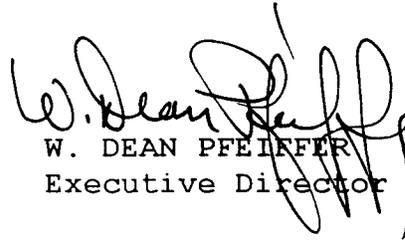
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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