



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

TJR  
Docket No: 9449-02  
29 August 2003

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

Subj: REVIEW OF NAVAL OF RECORD [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) SECNAVINST 1910.4B

Encl: (1) Case summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed an application with this Board requesting that the characterization of his discharge be changed.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 August 2003 and, pursuant to its regulations, a majority 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitation and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 16 March 1966 at age 19. In connection with his enlistment, Petitioner completed a Report of Medical History (SF-89) in which he denied any current or prior homosexual tendencies.

d. On 21 March 1966 Petitioner executed a statement in which he disclosed pre-service homosexual activity. He stated that he was aware of what constituted a homosexual act and knew that such

activity, if revealed, would prevent his enlistment. Petitioner said that he indicated that he did not have homosexual tendencies and deceived the recruiters because he did not want the draft board to find out about his homosexuality and did not want rumors started regarding his homosexuality. He further stated that his reason for disclosing this information was because he wanted to be separated from the Marine Corps so that he would not get caught participating in homosexual acts.

e. One day later Petitioner was diagnosed as a Class III homosexual. The evaluation report stated that Petitioner was not feigning homosexuality in order to obtain an early separation or to avoid disagreeable duty.

f. Petitioner was then processed for an administrative separation based on his failure to disclose his pre-service homosexual activities, as evidenced by his statement. On 24 March 1966 the commanding officer recommended Petitioner be issued an undesirable discharge by reason of misconduct due to fraudulent entry as evidenced by concealment of pre-service homosexual activities. On 28 March 1966 the discharge authority directed an undesirable discharge by reason of misconduct for the perpetration of a fraudulent induction and, on 6 April 1966, Petitioner was so discharged after only 22 days of service.

g. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or

(7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

h. The record fails to reflect the presence of any of the foregoing aggravating factors. Under today's standards, if separated within the first 180 days of active service, an individual discharged under these circumstances would receive an uncharacterized entry level separation. Otherwise, a general or honorable discharge would be issued, as warranted by the service record.

i. Under standards in effect at the time of Petitioner's separation, an individual separated due to fraudulent enlistment normally received an undesirable discharge. The current directive, reference (b), contains no such presumption.

j. In his application, Petitioner contends that he informed Marine Corps authorities on 16 March 1966, when he was drafted, of his homosexuality. However, he has provided the Board with no material evidence to support this contention, and the record contains evidence to the contrary.

#### MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Messrs. Neuschafer and McPartlin, concludes that Petitioner's request warrants favorable action.

In reaching its conclusion, the majority initially notes Petitioner's youth and immaturity and the fact that he served without disciplinary incident. The majority is also aware that Petitioner revealed his participation in pre-service homosexual activities shortly after he was inducted, and did not do so for the purpose of avoiding hazardous service. Further, under current standards, he would not be discharged under other than honorable conditions if processed for fraudulent enlistment or homosexuality. Based on the foregoing, and since Petitioner has suffered the consequences of an undesirable discharge for more than 35 years, the majority concludes that no useful purpose is served by continuing to characterize Petitioner's service as having been under other than honorable conditions, and relief in the form of a general discharge is appropriate.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 6 April 1966 vice the undesirable discharge actually issued on that same day.

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 1 November 2002.

MINORITY CONCLUSION:

Mr. ████████ disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member notes that Petitioner was fully aware that his homosexual activity would prevent his enlistment in the Marine Corps, but he deliberately signed the SF 89 which indicated that he did not have homosexual tendencies. Accordingly, Petitioner fraudulently enlisted in the Marine Corps by concealing such activity, and he only revealed his fraudulent enlistment because he was afraid of being caught in homosexual activity. The minority member believes that Petitioner's fraudulent entry supported an undesirable discharge, and since that discharge was proper at the time, Petitioner should not be permitted to change it now.

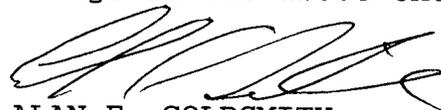
In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

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. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

MAJORITY REPORT APPROVED:



SEP - 8 2003



Assistant General Counsel  
(Manpower and Reserve Affairs)