



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

Docket No: 1130-03
4 September 2003

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) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member in the Navy, filed an application with this Board requesting that his record be corrected to show a better characterization of service than the undesirable discharge issued on 15 November 1946.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 August 2003 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 27 January 1944 at age 17. He then served in an excellent manner for over 30 months. During this period he was advanced to petty officer second class and participated in several campaigns in the Pacific area of operations.

d. On 10 July 1946, Petitioner was arrested by civil authorities on a charge of auto theft. He plead guilty to this charge on 9 August 1946 and was sentenced to six months in jail,

which was suspended; two years probation; and \$30 restitution to the owner of the car. He returned to the Navy on 9 August 1946.

e. Petitioner was convicted by a summary court-martial on 30 August 1946 of an unauthorized absence of about 30 days, the time he was held by civil authorities. The court sentenced him to a reduction in rate. On 11 September 1946, the commanding officer informed the Bureau of Naval Personnel of the civil conviction, but recommended that Petitioner be retained in the Navy. However, after review, BUPERS directed an undesirable discharge by reason of conviction by civil authorities. He was so discharged on 15 November 1946.

f. Petitioner stated at a review of his discharge by the Board of Review, Discharge and Dismissals (BRDD) in 1947 that he and several others accepted a ride from another Sailor who they knew was driving a stolen vehicle. With his application, he has submitted character references attesting to his good character for many years. The Federal Bureau of Investigation has reported that Petitioner has no record of arrests or convictions.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that his excellent record both before and after the isolated incident that resulted in his discharge is sufficient to mitigate his misconduct. Additionally, the fact that the commanding officer recommended his retention lends credence to the statement he made to the BRDD in 1947. The Board concludes that he has been adequately punishment for his isolated error in judgment and the discharge should now be recharacterized to general as a matter of clemency.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 15 November 1946 he was issued a general discharge by reason of misconduct vice the undesirable discharge now of record.

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 12 February 2003.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and

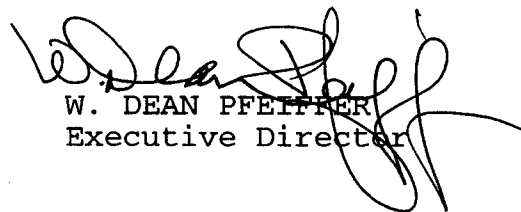
complete record of the Board's proceedings in the above entitled matter.

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