



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

TRG
Docket No: 6810-06
28 March 2007

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
DECEASED, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) DODDIR 1332.14

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

1. Pursuant to the provisions of reference (a), Petitioner, the son of the deceased former enlisted member of the Navy, filed an application with this Board requesting that his late father's record be corrected to show a better characterization of service than the bad conduct discharged issued on 28 September 1945.

2. The Board, consisting of Ms. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 March 2007 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 consider the application on its merits.

c. Subject enlisted in the Naval Reserve on 4 November 1942 at age 20 and reported for active duty two days later. Subsequently, he graduated from hospital corps school and was designated a hospitalman. He continued to serve in an excellent manner and, on 1 September 1943, he was advanced to petty officer third class. In May 1944 he graduated from the field medical school and, on 26 July 1944, he reported for duty with the Marines. On 26 March 1944 he disembarked with his battalion at Guadalcanal, British Soloman Islands.

d. On 31 October 1944 Subject was accused of propositioning two members of the Army to perform a homosexual act. He was promptly returned to the United States. On 13 January 1945, he was convicted by a general court-martial (GCM) on two specifications of scandalous conduct tending to the destruction of good morals. The court sentenced him as mitigated to reduction to apprentice seaman, forfeiture of all pay and allowances, confinement at hard labor for eight months and a bad conduct discharge. The bad conduct discharge was issued on 28 September 1945.

e. Petitioner states that his parents were very religious and raised seven children and four step children. His father worked two jobs for many years to support his family. He cannot believe his father would commit a homosexual act.

f. Reference (b) sets forth the Department of Defense's current policies, standards and procedures for administratively separating enlisted servicemembers. 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 servicemembers who commit a homosexual act or acts. If separated, the servicemember'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.

g. Subject's military records fail to disclose the presence

of any of the aggravating circumstances which would warrant the issuance of an other than honorable discharges under the provisions of reference (b).

h. Under standards in effect at the time, an individual could not received a fully honorable discharge if convicted by a GCM.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board now finds the existence of an injustice warranting corrective action. Based upon Subject's overall record of service and current Department of the Navy policy as established by reference (b) and its radical departure from the policy which was in effect on 28 September 1945 the date of Subject's discharge, the Board concludes that it would be in the interest of justice to retroactively apply the standards of reference (b) to Subject's case. Using the standards of reference (b), the Board finds that relief in the form of recharacterization to a general discharge is appropriate.

The Board further concludes that this Report of Proceedings should be filed in Subject's naval record so that all future reviewers will understand the reasons for recharacterization of the discharge.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that on 28 September 1945 he was issued a general discharge by reason of unfitness vice the bad conduct discharge now of record.

b. That the Department of Veterans Affairs be informed upon request that the application was received by the Board on 2 August 2006.

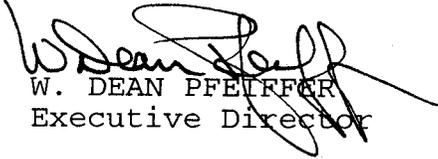
c. That this Report of Proceedings be filed in Petitioner's naval record.

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