



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

SMS  
Docket No: 6948-08  
25 November 2008

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) Case Summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy Reserve, applied to this Board requesting to upgrade the bad conduct discharge (BCD) that was issued on 6 September 1946.

2. The Board, consisting of Ms. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 25 November 2008, 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 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. On 16 July 1943, Petitioner enlisted in the Navy Reserve at age 19 and immediately began a period of active service. On 4 August 1944, he was convicted by a summary court-martial of a 13 day period of unauthorized absence (UA). He then served without incident until 24 July 1945, when he was convicted by a general court-martial (GCM) of a three day period of UA. The sentence included reduction in rank, confinement, and a BCD. The confinement was subsequently reduced. On 27 November 1945, the Secretary of the Navy remitted his sentence, directed restoration to duty, and placed him on six months of probation. On 19 April 1946, he began a period

of leave that expired on 22 April 1946. However, he did not return until 25 April 1946, after being in a UA status for two days and 17 hours. The record shows that upon his return, Petitioner explained that he had sent a telegram to his unit requesting a leave extension because a member of his family was ill, and then the bus broke down during his return travel which caused a further delay. On 25 April 1946, he had captain's mast for the two day period of UA, which resulted in revocation of his probation and execution of the remaining portion of his GCM sentence. On 3 May 1946, a psychiatric evaluation stated that Petitioner believed that he had been treated unfairly in his punishments and had lost his desire for restoration to duty. The evaluation stated that on the evidence as it appeared, there seemed to be some justification for his attitude and concluded by not recommending restoration to duty. On 22 August 1946, the BCD was directed to be executed if conditions were satisfied. On 28 August 1946, the GCM Review Board recommended remittance of his unexecuted sentence, restoration to duty, and six months of probation. On 6 September 1946, he was discharged with a BCD.

d. Petitioner states in essence that there was no reason for him to receive a BCD and would like to have military honors when he dies.

e. The law and regulations authorize the awarding of a BCD to service members who are convicted by a GCM and the punishment imposed includes such a discharge.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board is aware that his GCM conviction and the sentence imposed were processed in accordance with the law and regulations. Nevertheless, the Board finds that Petitioner's offenses were relatively minor and did not warrant a BCD. Specifically, his offenses included three instances of UA that totaled about 16 days. The Board also finds that the three day period of UA that resulted in revocation of his probation was not severe enough to warrant execution of the BCD, that the GCM Review Board also held that same opinion since they recommended restoration to duty and probation ten days before he was discharged. The Board further finds that he completed more than 28 months of active duty and there is no evidence of disrespect. Therefore, as a matter of clemency, the Board concludes that his discharge should be changed to general.

#### RECOMMENDATION:

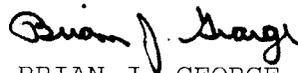
a. That Petitioner's naval record be corrected to show that he was separated with a general discharge on 6 September 1946, vice the BCD issued on that date.

b. That a copy of 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 21 July 2008.

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

  
BRIAN J. GEORGE  
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 Regulation, 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