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

CRS
Docket No: 7524-09
29 January 2010

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

Subj: FORMER [redacted] REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner applied to this Board requesting that his naval record be corrected to show that he received an honorable discharge on 14 August 1962.

2. The Board, consisting of Messrs. [redacted] and [redacted] reviewed Petitioner's allegations of error and injustice on 27 January 2010 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. Petitioner served on active duty in the Navy from 7 June 1961 to 14 August 1962, when he was discharged under other than honorable conditions pursuant to his request for discharge for the good of the service in lieu of trial by court-martial for an unknown offense. He contends, in effect, that the charged offense was engaging in consensual homosexual acts.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, Messrs. Pfeiffer and Tew conclude that Petitioner's request warrants favorable action. They believe his account of the circumstances of his discharge, and conclude that current standards should be applied in his case. Those standards, which

are contained in reference (b), provide that a service member who is discharged by reason of homosexuality will receive an honorable or general discharge, as warranted by his service record, unless aggravating factors are present, in which case a discharge under other than honorable conditions may be awarded. As there is no evidence of aggravating factors in this case, and as Petitioner's service was otherwise honorable, Messrs. Pfeiffer and Tew recommend that his discharge be upgraded to honorable.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged on 14 August 1962.

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

MINORITY CONCLUSION:

[redacted] concludes that the available evidence is insufficient to demonstrate that Petitioner was discharged for engaging in consensual homosexual activity. Accordingly, he recommends that Petitioner's request be denied.

MINORITY RECOMMENDATION:

That no relief be granted.

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

JAMES R. EXNICIOS
Acting Recorder

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

W. DEAN PFEIFFER

The majority recommendation is approved:

Robert L Woods 2/16/10

Assistant General Counsel
Manpower and Reserve Affairs)

The minority recommendation is approved: