



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

SJN  
Docket No: 8442-09  
10 May 2010

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with this Board requesting an upgrade of the bad conduct discharge (BCD) he received on 18 March 1949.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 7 May 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. 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 Navy on 20 May 1947 at the age of 17. He served for nearly a year without disciplinary incident, however, during the period from 4 May to 11 November 1948 he received captain's mast (CM) on three occasions for being out of uniform, gambling, and drunkenness.

d. On 10 January 1949 Petitioner was convicted by summary court-martial (SCM) of disobedience, using obscene and abusive language, and creating a disturbance. He was sentenced to a \$120 forfeiture of pay and a BCD, which was remitted for six months.

e. On 12 March 1949 Petitioner was convicted by civil authorities of willful and malicious destruction of a toilet tissue holder, toilet bowl, and tower rack valued at approximately \$75. He was sentenced to probation for a year and to make restitution for the damages in the amount of \$37.50. Subsequently, he was also convicted by CM of the foregoing offenses and the BCD awarded at the 10 January 1949 SCM was ordered executed. As a result of this action, on 18 March 1949, he was issued a BCD.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board is aware of Petitioner's record of disciplinary incidents and does not condone his misconduct. However, the Board's finding is based partially on his overall performance record, which includes a conduct average of 2.33, and the minor nature of his misconduct. In this regard, the Board does not believe that, under today's standards, his minor disciplinary infractions would not warrant a BCD. Based on the foregoing, and considering the fact he has suffered the consequences of a BCD for more than 60 years, the Board concludes that no useful purpose is served by continuing to characterize his service as having been under other than honorable conditions, and recharacterization to a general discharge is appropriate. Accordingly, the Board concludes that relief in the form of recharacterization of his discharge is appropriate.

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

#### RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was issued a general discharge on 18 March 1949 vice a BCD on the same day.

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

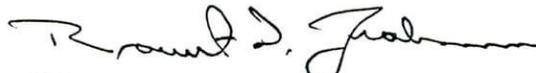
c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 10 August 2009.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c), 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