



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

RDZ:ecb
Docket No. 06366-10
8 September 2010

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED]

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

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 the other than honorable discharge (OTH) issued to him on 23 June 1993 be upgraded.

2. The Board, consisting of Messrs [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 August 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's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 19 July 1990.

d. From July 1990 until May 1992 Petitioner had no disciplinary infractions and with respect to his military duties he was described as hardworking and conscientious. Unfortunately on 29 May 1992 he

was convicted by civil authorities of criminal trespass, a misdemeanor. In sworn testimony before an administrative discharge board (ADB) convened in May 1993 Petitioner admitted that he and apparently another Sailor entered a private residence without proper authorization. He was fined and placed on unsupervised probation.

e. After Petitioner's civil conviction he reported to the personnel support detachment (PSD) at [REDACTED] to await transfer back to his ship, [REDACTED] that had deployed to the [REDACTED]. Upon reporting to PSD [REDACTED] Petitioner was instructed to proceed to the [REDACTED] transient facility at [REDACTED]. Petitioner reported to [REDACTED] but due to some administrative confusion he was not admitted to this facility. Petitioner then proceeded to the PSD in [REDACTED]. According to officials at PSD [REDACTED] they had no knowledge of Petitioner's whereabouts until 18 September 1992. Eventually Petitioner was charged with unauthorized absence (UA) from 20 July to 18 September 1992 since he had not checked into [REDACTED] and then failed to keep officials at [REDACTED] informed of his whereabouts which substantially delayed his return to [REDACTED].

f. On 28 October 1992 Petitioner received nonjudicial punishment for UA and was sentenced to forfeiture of pay and 60 days of restriction. His commanding officer then referred this matter to an ADB to determine if Petitioner should be retained in the Navy or involuntarily discharged because of his UA. It was the recommendation of the commanding officer that Petitioner be separated with an OTH.

g. The ADB convened on 14 May 1993. During the course of these proceedings Petitioner asked to be retained citing his excellent work record and the mitigating circumstances surrounding his UA. In regard to Petitioner's performance of duty two officers and one noncommissioned officer for whom Petitioner had worked both before and after his UA testified on his behalf. All three described Petitioner as an exemplary worker who had no disciplinary problems while aboard ship. The noncommissioned officer who was Petitioner's leading petty officer went so far as to say that Petitioner was worth any two men that were then working for him. All three recommended that Petitioner be returned to duty and given an opportunity to redeem himself. Although the government never introduced any evidence to rebut or cast doubt on the testimony of the three witnesses who testified on Petitioner's behalf the ADB voted to separate him from the Navy with an OTH. Accordingly, Petitioner was so discharged on 23 June 1993.

h. Since his discharge Petitioner has conducted himself in a law abiding manner.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that the interests of justice would have been better served had Petitioner's OTH been suspended thereby allowing him to return to duty to complete his enlistment with a better characterization of service. The Board relies on Petitioner's superior performance of duty aboard ship, the extenuating circumstances surrounding his UA and the fact that during his nearly first two years of service he had no disciplinary infractions. The Board also takes into account his post service conduct. Under these circumstances the Board believes that clemency is warranted by upgrading Petitioner's discharge to general under honorable conditions.

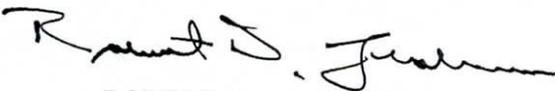
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that 23 June 1993 he was issued a general discharge under honorable conditions in lieu of the other than honorable discharge originally issued on that date.

b. That upon request, the Department of Veterans' Affairs be informed that Petitioner's application was received by the Board on 11 June 2010.

c. That a copy of 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

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 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