



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

SJN
Docket No: 01037-13
20 November 2013

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[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, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting an upgrade of his other than honorable discharge issued on 23 October 1992.

2. The Board, consisting of Mr. Sproul, Mr. Rothlein, and Ms. Trucco, reviewed Petitioner's allegations of error and injustice on 19 November 2013 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. The majority of the Board, Mr. Rothlein and Ms. Trucco, voted to upgrade Petitioner's discharge. The minority member, Mr. Sproul, voted to deny relief. 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 enclosure (1) 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. Petitioner enlisted in the Navy and began a period of active duty on 5 July 1990. On 14 February and 19 July 1992, he received nonjudicial punishment (NJP) for two instances of

disobedience, larceny, and assault. He was diagnosed as being alcohol dependent and was recommended to attend Level III Alcohol Rehabilitation Treatment on 28 July 1992, but refused. Subsequently, administrative discharge action was initiated by reason of alcohol rehabilitation treatment failure and misconduct due to commission of a serious offense. He waived his rights to consult counsel, submit a statement or have his case heard by an administrative discharge board (ADB). His case was forwarded recommending that he be discharged under other than honorable (OTH) conditions. The separation authority concurred and directed an OTH discharge by reason of misconduct due to commission of a serious offense. He was so discharged on 23 October 1992.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Mr. Rothlein and Ms. Trucco, concludes that Petitioner's request warrants favorable action.

In reaching its conclusion, the majority initially notes Petitioner's youth, time in service and after careful and conscientious consideration of the entire record, including his two NJP's, the majority concludes that even though the OTH was proper, based on his overall record of military service, post service accomplishments, and character letters accompanying his application, the record should reflect a general characterization of service. In view of the foregoing, the majority recommends the following corrective action:

MAJORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 23 October 1992, he was issued a general discharge vice the OTH discharge actually 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 on 14 January 2013.

MINORITY CONCLUSION:

Mr. Sproul disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member notes that Petitioner was separated for misconduct due to a commission of a serious offence. The minority further notes that he was diagnosed as being alcohol

dependent, offered treatment to overcome his dependency and subsequently refused such treatment, thus, supporting the OTH discharge. Since that discharge was proper at the time, Petitioner should not be permitted to change it now. Additionally, the fact that he waived his right to an ADB, his best chance for retention or a better characterization of service convinces the minority that relief is not warranted. In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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 George
BRIAN J. GEORGE
Acting Recorder

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

RW
MAJORITY REPORT APPROVED:

4/14/14

W. Dean Pfeiffer
W. DEAN PFEIFFER

~~MINORITY REPORT APPROVED:~~

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