



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

SJN
Docket No: 01978-13
5 February 2014

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) DD Form 149 with attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) with this Board requesting an upgrade of his other than honorable (OTH) characterization of service and removal of his 1 August 1980 nonjudicial punishment (NJP) from his Official Military Personnel File (OMPF).
2. The Board, consisting of Mr. Clemmons, Mr. Dixit, and Ms. Tollefson, reviewed Petitioner's allegations of error and injustice on 4 February 2014 and, pursuant to its regulations, determined that the limited 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 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 28 September 1978. On 14 May and 1 August 1980, he received nonjudicial punishment (NJP) for two days of unauthorized absence (UA) and wrongful possession of marijuana. On 2 August 1981, as a result of his NJP appeal of his 1 August 1980 NJP, the General Court-Martial Convening Authority (GCMCA) determined that due to inexcusable delay in the processing of his

appeal he would set aside his 1 August 1980 NJP proceedings and punishment and all property and privileges Petitioner was deprived of were restored. On 11 January 1983, he was counseled after being identified as a wrongful drug user, and warned that further misconduct could result in administrative discharge action. On 13 January 1983, he received NJP for disobedience. On 2 February 1983, he was counseled regarding the wrongful use of marijuana. On 30 September 1983, he received NJP for failing to go to his appointed place of duty, disobedience, and assault consummated by a battery. He received a reduction in paygrade, restriction, extra duty, and a forfeiture of pay. Subsequently, administrative discharge action was initiated by reason of 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 by reason of misconduct. The discharge authority concurred and directed an OTH discharge by reason of misconduct due to commission of a serious offense. He was so discharged on 30 November 1983.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of Commander, Destroyer Squadron THIRTY-FIVE third endorsement dated 2 July 1981, the Board concludes that Petitioner's request warrants partial favorable relief and that all derogatory material associated with his NJP dated 1 August 1980 be removed from his OMPF. With regard to his OTH characterization of service, the Board carefully weighs all potentially mitigating factors, such as his youth and record of service. Nevertheless, the Board concludes these factors were not sufficient to warrant recharacterization of his discharge given his three other NJP's for serious offenses, and the fact that he was counseled and warned on two occasions, one of which was for wrongful drug use, that further misconduct could result in administrative discharge action. Finally, the Board notes that he waived the right to an ADB, his best chance for retention or a better characterization of service. In view of the above, the Board directs the following partial favorable relief.

RECOMMENDATION:

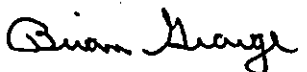
a. That all derogatory material associated with Petitioner's 1 August 1980 NJP be removed from his OMPF. Specifically, redact line item #9, 01AUG80 entry on Enlisted Performance Record (NAVPERS 1070/609), remove Court Memorandum (NAVPERS 1070/607) dated 80AUG01, and redacted from USS MARS forwarding message dated 10 November 1983, paragraph #5 Summary of military offenses(s) the 01AUG80 NJP entry.

b. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

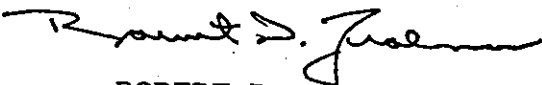
c. That no further relief be granted.

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.


ROBERT D. ZSALMAN
Acting Executive Director