



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

[REDACTED]
Docket No: 7435-16

NOV 4 2017

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN, [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) SECNAVINST 5420.193

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting that his other than honorable (OTH) discharge of 28 July 1953, be changed. The Board's decision is forwarded to you for final approval in accordance with reference (b) because the decision to grant relief was not unanimous.
2. The Board, reviewed Petitioner's allegations of error and injustice on 19 September 2017 and, pursuant to its regulations, a majority determined that the corrective action indicated below should be taken on the available evidence of record and clemency. 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 on 13 April 1948. On 29 January 1951, Petitioner received nonjudicial punishment (NJP) for deprivation of liberty. On 5 September 1952, Petitioner was convicted by civil authorities of larceny. On 27 May 1953, Petitioner plead no contest to the larceny charge and was fined \$200. Subsequently, Petitioner was notified of pending administrative separation action by reason of misconduct due to civil conviction. Petitioner elected to consult with legal counsel and subsequently requested an administrative discharge

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board (ADB). The ADB recommended an other than honorable (OTH) discharge by reason of misconduct due to civil conviction. The discharge authority approved this recommendation and directed an OTH discharge by reason of misconduct. On 28 July 1953, Petitioner was discharged.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the majority initially notes Petitioner's disciplinary infractions, but does not condone his misconduct. However, the Board concluded that clemency should be granted due to Petitioner's age. In this regard, the Board concludes that the record should be corrected to show he received a general characterization of service.

MAJORITY RECOMMENDATION:

- a. That Petitioner's Naval record be corrected to show that on 28 July 1953, he received a general (under honorable conditions) discharge.
- b. That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215).
- c. That a copy of this report of proceedings be filed in Petitioner's Naval record.
- d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 22 February 2017.

MINORITY CONCLUSION:

The minority disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. As such, the minority member notes that Petitioner was arrested by [REDACTED] Police Department due to larceny. Petitioner plead no contest to the larceny charge and was fined \$200, which supports the Commanding Officer's decision to initiate administrative separation proceedings. Petitioner elected to consult with legal counsel and subsequently requested an ADB. The ADB recommended an OTH discharge by reason of misconduct due to civil conviction. Finally, the minority concluded that there was no error in the counseling of a documented arrest or the separation proceedings, which was properly documented and does not demonstrate injustice.

MINORITY RECOMMENDATION:

- a. That Petitioner's request be denied.

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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.

[REDACTED]
Recorder

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

[REDACTED]
Executive Director

Reviewed and Approved the MAJORITY Recommendation (Partial Relief)

~~Reviewed and Approved the MINORITY recommendation (Deny Relief)~~

[REDACTED]
Signature

Date

11/28/2017