



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

[REDACTED]
Docket No: 443-17

APR 10 2017

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

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

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

Encl: (1) DD Form 149 dtd 30 June 2015
(2) Case summary

1. Pursuant to the provisions of reference (a) Mr. Darrel C. Lawson of Libby, Montana, hereinafter referred to as Petitioner, on June 30, 2015 filed a petition (enclosure (1)) with this Board requesting, in effect, that the applicable naval record be corrected by upgrading his October 1957 General (under honorable conditions) administrative discharge ("GEN") from the U.S. Navy. Specifically, the Petitioner is requesting an upgrade of the GEN discharge he received because he contends that he was originally told that GEN discharges are given for medical reasons, but subsequently discovered that that was not true. Enclosures (1) and (2) apply.
2. The Petitioner's application was initially considered by a panel of the Board on 21 June 2016, and such BCNR panel denied relief. However, prior to the publication of the Board's decision, his application was subsequently referred to a new panel for reconsideration after a legal review determined that the first panel of the Board may not have considered all the evidence of record. The subsequent Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 January 2017. Pursuant to Board regulations, and by a vote of 3 to 0, the Board determined that the evidence was insufficient to establish the existence of probable material error or injustice and that no corrective action should be taken. Documentary material considered by the Board consisted of the Petitioner's application, together with all material submitted in support thereof, the Petitioner's Navy record, and applicable statutes, regulations, and policies. These documents are enclosed for your review. No advisory opinion was requested or obtained for this case.
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.

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b. Enclosure (1) was not filed in a timely manner, however, the Board found it in the interest of justice to waive the statute of limitations and consider the Petitioner's full application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 21 June 1956. He was hospitalized during the period from 18 September to 25 October 1957, and diagnosed with immaturity with symptomatic habit reaction and somnambulism. While in the hospital, Petitioner was found unfit for further service and processed for discharge. On 25 October 1957, Petitioner received a GEN discharge by reason of convenience of the government. At the time of his discharge, Petitioner's overall trait average was 2.72, with a conduct/military behavior average of 3.0.

d. In accordance with separation guidance and directives in place at the time of the Petitioner's discharge, to earn a fully honorable characterization of service, both a 3.0 conduct/military behavior average, and an overall trait average of 2.7 was required. Petitioner met or exceeded the minimum grade requirements in both categories (3.0 and 2.72, respectively).

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's reconsideration request did not warrant favorable action. The Board decided that the documentation provided was insufficient to establish the existence of probable material error or injustice.

The Board found that the only justification for a higher characterization of service is the average marks he achieved during his relatively short period of service. This considers only one set of marks given on 18 September 1957, and a single military behavior mark given for a six-week period while he was hospitalized. The Board further noted that an entry in his Enlisted Performance Record, made on 25 October 1957, states: "Qualifies for a General discharge in accordance with BUPERS Instruction 1616.4." In view of the foregoing, the Board concluded that a GEN discharge was within the Commanding Officer's authority and is reasonable based on the totality of circumstances. The Board noted that his narrative reason for discharge "convenience of the government" was in accordance with Navy directives that state, in part, that a member of the naval service may be separated by convenience of the government "...when such member is suffering from a condition not considered a physical disability and such condition has interfered with his performance of duty."

MAJORITY RECOMMENDATION:

The Board recommends that Petitioner's request be denied.

BCNR EXECUTIVE DIRECTOR CONCLUSION:

Notwithstanding the Majority Conclusion, I firmly believe to the contrary, that the Petitioner's claim has merit, and he has established the existence of probable material error or injustice in his

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record, and that corrective action should be taken as outlined below. Justice was clearly not achieved in this case.

First and foremost, the Petitioner's separation was precipitated by a medical condition interfering with the performance of duty (somnambulism). Accordingly, it is patently unjust to de facto penalize someone for such a diagnosis and disability that is beyond the control of the service member. Moreover, the GEN discharge awarded in this case was in conflict with the letter and spirit of applicable Navy directives and policy in place at the time of Petitioner's discharge.

And, even assuming arguendo that it was still within the purview and discretion of Petitioner's Commanding Officer to recommend a GEN characterization, no useful purpose is served by continuing to characterize the Petitioner's service as having been GEN, and re-characterization to an Honorable discharge is now more appropriate, especially for someone with trait averages that would independently meet the requirements for an honorable discharge, and has an otherwise clean service record.

Considering the lack of any identifiable aggravating circumstances or misconduct whatsoever, and that the Petitioner achieved the required trait averages, I am not convinced that justice was done and that the Petitioner received the discharge he deserved and earned. The GEN discharge awarded was inconsistent with Navy directives and policy in place at the time of Petitioner's discharge. This clear-cut injustice demands and dictates relief in the form of changing the GEN discharge to a fully Honorable discharge.

BCNR EXECUTIVE DIRECTOR RECOMMENDATION:

The Executive Director recommends that Petitioner's naval record be corrected to upgrade his discharge characterization from a GEN to an Honorable discharge.

Accordingly, the Executive Director recommends that the following corrections be made to Petitioner's "Armed Forces of the United States Report of Transfer or Discharge" (DD Form 214):

- a. That the character of service be corrected to read "Honorable";
- b. That the narrative reason for separation be corrected to read "Secretarial Authority";
- c. That the separation authority be corrected to read "MILPERSMAN 1910-164";
- d. That Petitioner be issued a new DD Form 214;
- e. That a copy of this Report of Proceedings be filed in Petitioner's naval record;
- f. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received on 17 July 2015; and

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g. 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 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 Board Majority Recommendation (deny relief)~~

Reviewed and Disapprove the Board Majority Recommendation – Concur with the BCNR
Executive Director (grant full relief)

[REDACTED]
Signature

4/25/17
Date