



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5958-97

24 March 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) SECNAVINST 7220.38E

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by changing the reason for discharge or, in the alternative, that the record be corrected to show that the unearned portion of his Selective Reenlistment Bonus (SRB) was not recouped.

2. The Board, consisting of Mr. Dunn, Mr. Reid and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 23 February 1999 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 4 June 1986. During the next six years he graduated from the Nuclear Power School and the Nuclear Power Training Unit and on 15 July 1989 he was aboard USS TENNESSEE (SSBN 734) when she was commissioned. He was honorably discharged on 5 July 1992 for the purpose of immediate reenlistment.

d. Petitioner reenlisted in the Navy on 6 July 1992. At that time he was authorized an SRB of \$29,079.60. He was paid

an initial installment of \$14,539.80 and was to be paid the remainder in annual installments of \$2,907.96. He then spent the next 22 months in the Enlisted Educational Advancement Program at the University of Florida. He was disenrolled from this program on 18 May 1994 for failing to meet academic standards. He reported aboard the USS HAMPTON (SSN 767) on 24 October 1994.

e. On 31 January 1995 Petitioner was referred for a psychiatric evaluation because of stress. In the subsequent psychiatric evaluation, the history of the present illness was described, in part, as follows:

... He denied a history of conduct problems. ... He graduated from HS and is 30 hours from receiving his B.S. degree in Electrical Engineering. He was in a Navy sponsored degree program but was disenrolled for failure to maintain his grades and for stress problems. ... He was seen by a civilian psychologist at the U of FL for 1 year (1993-1994); he was evaluated by a LCDR while at Jacksonville ... and was recommended for expeditious admin sep but this recommendation was not acted on by his former command. According to (his) Dept. Head (he) has not effectively performed his responsibilities at the command and has shown a poor attitude since reporting aboard.

The diagnosis was a personality disorder not otherwise specified with narcissistic and borderline features. The psychologist recommended expeditious separation since he was judged to represent a continuing danger to self or others if retained in the Navy.

e. In the performance evaluation for the period 1 December 1994 to 28 March 1995 he was not recommended for advancement or reenlistment in the Navy. On 31 March 1995 Petitioner was notified of separation processing due to the diagnosed personality disorder and waived his rights. On 7 April 1995 the discharge authority directed discharge due to the diagnosed personality disorder. He was so separated on 7 April 1995. At that time, he was assigned an RE-3G reenlistment code. The record shows that he was paid separation pay in the amount of \$7,486.84.

f. On 7 December 1996 the Defense Finance and Accounting Center informed Petitioner that he was indebted in the amount of \$17,750.66 for the unearned portion of his SRB and the erroneous separation pay. With his application, Petitioner has submitted a letter from the General Accounting Officer which concludes that

Petitioner accepted the erroneous separation pay in good faith and waived repayment of the \$7,486.84. This leaves a remaining indebtedness of \$10,263.82 from the unearned portion of the SRB.

g. Petitioner states in his application, in part, as follows:

... As stated previously, when the decision to separate me involuntarily was made, I asked repeatedly if recoupment of ... the reenlistment bonus would be made. I was told repeatedly there would be no recoupment due to the nature of the separation (involuntary). ... you pointed out that I did not challenge the separation decision. This is not entirely true. I felt remorse and shame that I would not be fulfilling my contract. While no formal challenge was made, I asked several different personnel about reassignment away from submarine duty while I tried to work through my difficulties. I was told no and thought that was the end of it. ...

You also had some concern about the \$7,000 sep pay. While it is true that the recoupment of that portion of my indebtedness was waived, I believe it to be a separate issue, apart from this case, the recoupment for (the) reenlistment bonus paid. In the case of the sep pay, a decision was made in my favor because a mistake was made by the personnel processing my discharge. (A) mistake was made by those same people in this case as well. As I said, I asked several people (indeed everyone I came into contact with during separation), over several days time, about possible recoupment and was told repeatedly that no recoupment would be made. With those assurances, I was separated and made many financial decisions based on what I thought was my current financial situation. I was separated in April 1995, in October, my wife and I bought a house and decided to have another child. My wife got pregnant in November and everything was going great. Then in December, just a few weeks before Christmas I get a bill from DFAS for over \$17,000 dollars.

Since that I have tried to make payments when I could, sometimes shifting the debt to high interest credit cards because they demand a lower monthly payment and in order to keep DFAS happy. This large debt has caused great difficulty in getting additional credit and I was unable to effectively start my own business because of this. ... This indebtedness and the

payments for it are causing an unnecessary financial hardship on my family. Unnecessary because it is due to no fault of my own. I tried to do everything right and ask the right questions. ...

h. Reference (b) sets forth the criteria for remission or waiver of indebtedness or erroneous payments made to or on behalf of members and former members of the Naval service. This instruction implements Title 10 U.S.C. 6161 and 10 U.S.C. 2774. Waiver action based on 10 U.S.C. 2774 for the portion of the indebtedness related to the SRB is precluded in this case since the payment was legal and proper when paid. However, under the provisions of 10 U.S.C. 6161 a remission of the indebtedness of an enlisted member on active duty is authorized provided the request for remission is approved by the Secretary of the Navy or a designee prior to the individual's honorable discharge.

i. The criteria for requesting such a remission of indebtedness are set forth in reference (b). That reference states that an investigation must be conducted into the facts and circumstances surrounding the request for waiver and the commanding officer must recommend that the request for remission be granted. The reference also directs that active duty members be advised of their right to request remission consideration under the provisions of the reference immediately upon discovery of an overpayment. There is no indication in the record that Petitioner was ever advised as required. It was known, or should have been known, that an indebtedness would occur when discharge was directed. Since Petitioner was discharged the same day as the discharge authority's decision for discharge, there was certainly insufficient time to get a request for remission through the system even if he had been properly advised.

j. The Board has recommended remission of indebtedness in a few other cases where there was some degree of hardship, but the Board did not wish to recommend a change in the reason for discharge to hardship. Such a change would result in the payment of all unpaid installments of the SRB. As indicated, this case is different because the discharge was based on an adverse psychiatric evaluation.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. In reaching its decision, the Board notes that Petitioner was a good performer until he began have problems while he was at the university. Given his continued psychiatric problems, the Board concludes that Petitioner was properly

discharged due to the diagnosed personality disorder. Accordingly, the Board denied Petitioner's request for a change in the reason for discharge.

Given its conclusion that Petitioner was properly discharged, the Board further concludes that since he could not continue in the Navy because of a condition beyond his control, remission of at least part of the indebtedness is appropriate. However, the Board notes that Petitioner was erroneously paid separation pay in the amount of \$7,486.84 and received a windfall when he did not have to pay it back. Therefore, the Board believes that the amount to be remitted should only be \$2,776.09, the amount remaining after subtracting the \$7,486.84 from the unearned SRB of \$10,263.82.

The action to remit the indebtedness can be accomplished by showing that a request for a partial remission of indebtedness was granted under the provisions of Title 10 U.S.C. 6161 and reference (b). Paragraph 7.a of reference (b) indicates that a decision on the request for remission must be made prior to discharge.

Therefore, the Board concludes that the record should show that remission of Petitioner's indebtedness in the amount of \$2,776.09 was approved by the Secretary of the Navy on 1 February 1995.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he requested a waiver of his indebtedness in the amount of \$2,776.09 and that this request was favorably endorsed by his commanding officer.
 - b. That Petitioner's record be further corrected to show that the request for waiver was approved by the Secretary of the Navy on 7 April 1995, the day of his discharge.
 - c. That this Report of Proceedings constitute the report of investigation or written report required by reference (b), and the Report of Proceedings be forwarded to the Defense Finance and Accounting Service for implementation under the provisions of the regulations.
 - d. That the remainder of Petitioner's requests be denied.
 - e. That 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



ALAN E. GOLDSMITH
Acting Recorder

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



W. DEAN PFEIFFER

Reviewed and approved:



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
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WASHINGTON, D.C. 20350-1000

MAY 21 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

After a careful review of the report of proceedings, the Board's Findings are approved but I have decided to modify the Conclusions, and the Relief granted to the Petitioner. Since the Board has determined that the Petitioner was discharged through no fault of his own because of his personality disorder, I find that as a matter of equity the entire amount of his indebtedness should be forgiven. Moreover, I agree with the Petitioner that the issue of the erroneous payment to him of separation pay is distinct from the matter of the selective reenlistment bonus (SRB) paid to him. Therefore, the fact that the General Accounting Office has waived recoupment of the erroneously paid separation payment has no bearing on whether recoupment of the SRB is waived. In conclusion, the BCNR's recommendation to waive only a portion of Petitioner's debt is modified to reflect that the entire amount of the indebtedness that is the subject of this petition will be waived.

Karen S. Heath

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)