



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7447-97

11 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 reinstating him to active duty, 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. He also requests that his reenlistment code be changed.

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 18 December 1990. During the next three years he graduated from the Nuclear Power School and the Nuclear Power Training Unit. He also received a nonjudicial punishment for underage drinking. He was honorably discharged on 19 December 1993 for the purpose of immediate reenlistment.

d. Petitioner reenlisted in the Navy on 20 December 1983. At that time he was authorized an SRB of \$25,339.50. He was paid

an initial installment of \$12,669.75 and was to be paid the remainder in annual installments of \$2,533.95. On 4 June 1994 he reported aboard the USS NIMITZ (CVAN 68).

e. On 13 January 1995 Petitioner was referred for a psychiatric evaluation. The referral noted that there was no degradation in work performance except an isolated episode of crying, anxiety and transient suicidal thoughts. In the subsequent psychiatric evaluation, the history of the present illness was described, in part, as follows:

He claims that over the last 7 months his stress level has gradually increased along with the work demands. Current symptoms include insomnia, nightmares and decreased appetite. He described one recent episode during which he experienced uncontrollable shaking, crying, and transient suicidal thoughts. This was in the context of (being) reprimanded by his division officer for being late. (He) prides himself on being an outstanding performer and when it appeared that his division officer was losing faith in him, he became distraught. He denied any other episodes similar to this and he denied any history of psychiatric illness. Upon returning to the clinic a second time, he reported that things had gotten much worse and that he was seriously contemplating suicide.

After psychological testing the psychologist made a diagnosis of Narcissistic Personality Disorder. The psychologist's summary states, in part, as follows:

... he was informed on his initial evaluation that his history and presenting complaints did not indicate any psychiatric disturbance. Upon returning the second time, he clearly "upped the ante" and claimed that he was contemplating suicide. He is not considered to be suicidal at this time, but desperately desires discharge from the Navy. Unfortunately he may be desperate enough to hurt himself or someone else or to embarrass the Navy.

The psychologist recommended expeditious separation since he was judged to represent a continuing danger to self or others if retained in the Navy.

e. On 1 February 1995 Petitioner was notified of separation processing due to the diagnosed personality disorder and waived his rights. The same day the discharge authority directed an honorable discharge. He was so separated on 1 February 1995. At that time, he was assigned an RE-3G

reenlistment code.

f. Sometime after discharge, Petitioner received a bill for the unearned portion of his SRB. Although, he has not submitted any documentation to show the amount of indebtedness he states that the amount is \$14,038. This indebtedness was caused, in large part, by the initial payment of \$12,669.75.

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

... I became disturbed about the low morale of some of my shipmates, and went to see the Chaplain on board the USS NIMITZ. Within 3 days, I was sent to the medical officer, a psychiatrist at Bremerton Hospital and completely separated from the United States Navy. The information written in (the psychologist's) report concerning our two meetings together are not only false, exaggerated and grossly misinterpreted, but down right lies. I would never disgrace myself or the Navy in such a manner as to allege being suicidal. The mere facts surrounding my discharge and the time and circumstances in which it was carried out, disprove any such allegation. I never once asked to be separated from the Navy, and I certainly was not suffering from any Narcissistic Personality Disorder. That can be confirmed by my 4.0 separation evaluation.

... I have been unable to secure a job for longer than six months due to being diagnosed with a severe adjustment disorder, which I developed after the way I was separated from the Navy. And as if this would (not) be enough, with the legal action being placed on my by the DFAS to collect a debt that is not backed by merit or policy, I now have to declare bankruptcy at age 25. ...

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 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.

k. Concerning Petitioner's request for a change in the reenlistment code, the Board is aware that when an individual is discharged because of a personality disorder, the only authorized reenlistment codes are an RE-3G or RE-4.

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 he has not submitted any evidence to support his contention that he did not want to be discharged or that the statements made by the psychologist in his evaluation were false and exaggerated. To the contrary, the record shows that Petitioner wanted out of the Navy and the psychiatric diagnosis appears to be based on a thorough evaluation which included psychiatric testing. In addition, he was advised of the discharge processing and elected to waive his rights. Therefore, the Board concludes that Petitioner was properly discharged due to the diagnosed personality disorder. Accordingly, the Board denied Petitioner's requests for reinstatement in the Navy and a change in the reason for discharge. Further, since he was assigned the least restrictive reenlistment code authorized by regulation, the Board also concludes that a change in the reenlistment code is not warranted.

However, given its conclusion that the psychiatric report

correctly diagnosed a personality disorder, the Board believes that Petitioner was discharged, at least in part, because of a condition beyond his control and remission of the indebtedness is appropriate. This can be accomplished by showing that a request for 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 Petitioner's indebtedness due to the SRB overpayment was approved by the Secretary of the Navy on 1 February 1995. Petitioner has not submitted any documentation to support his indebtedness, but he claims he is indebted in the amount of \$14,039 which appears to be approximately correct. However, the actual amount will be based on the computation of the unearned portion of his SRB made by the Defense Finance and Accounting Service (DFAS).

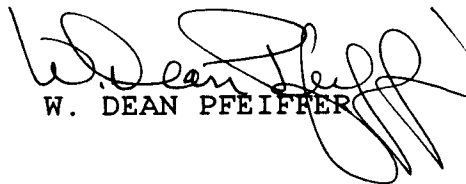
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he requested a waiver of his indebtedness and that this request was favorably endorsed by his commanding officer. The amount recommended for waiver will be the amount of the unearned portion of the SRB as computed by DFAS but should not exceed 14,500.
 - b. That Petitioner's record be further corrected to show that the request for waiver was approved by the Secretary of the Navy on 1 February 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:

MAY 21 1999

Karen S. Heath

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