



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 2684-01
21 August 2001

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 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 Navy, applied to this Board requesting, in effect, that the reason for discharge and his reenlistment code be changed.

2. The Board, consisting of Ms. Schnittman and Messrs. Mazza and Novello, reviewed Petitioner's allegations of error and injustice on 15 August 2001 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 October 1998 for four years at age 19. The record reflects that on 23 November 1998 he was diagnosed by a medical officer as dependent on alcohol, amphetamines and marijuana; and had abused other

substances. Petitioner also disclosed that prior to service, he received treatment for substance abuse and was in aftercare for six months.

d. Petitioner was then notified that administrative separation was being considered which could result in his release from the custody of the armed forces by reason of defective enlistment due to void entry into the Naval service, as evidenced by a medical evaluation of drug and alcohol dependence. He was advised of his procedural rights, declined to consult with legal counsel or submit a statement in his own behalf, and waived the right to have his case reviewed by the general court-martial convening authority. Thereafter, the discharge authority directed that Petitioner's enlistment be voided. He was separated by reason of "erroneous entry-drug abuse" on 14 December 1998 and assigned an RE-4 reenlistment code.

e. The DD Form 214 issued on Petitioner's separation has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "ENTERED: 98OCT28/RELEASED:98DEC14. Enlistment Void. This release does not constitute a discharge and a discharge certificate has not be issued."

f. Federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent. However, the law also requires that the testing and evaluation to determine dependence be conducted within 72 hour after the individual reports to an initial period of active duty. If an individual does not receive a void enlistment but is separated within 180 days after beginning active service, an uncharacterized entry level separation is normally issued.

g. The Board is also aware that an individual can be separated due to an erroneous enlistment if there is a condition which, had it been known prior to enlistment, would have prevented enlistment. Drug or alcohol dependence are such conditions. Additionally, the applicable regulation requires the assignment of an RE-4 reenlistment code to individuals discharged by reason of "erroneous entry-drug abuse."

h. Petitioner contends that he was told by his recruiter not to admit to anyone in the Navy that he had been in a drug

and alcohol rehabilitation program as a minor. However, when questioned in recruit training, he became nervous and disclosed his prior drug use and treatment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, Petitioner's contentions are neither supported by the evidence of record nor by any evidence submitted in support of his application. Further, his enlistment could have been properly voided if the diagnosis of alcohol and drug dependence had been made within 72 hours, as required by law. However, since he was not diagnosed as alcohol and drug dependent until about 26 days after his enlistment, the diagnosis of dependence was not accomplished within the time limits prescribed by law for a void enlistment. Therefore, the Board concludes that Petitioner's enlistment was improperly voided. Accordingly, the record should be corrected to show that he received an uncharacterized entry level separation by reason of erroneous entry vice void enlistment.

Concerning the reenlistment code, the Board notes that regulations require the assignment of an RE-4 reenlistment code to an individual separated by reason of erroneous entry due to drug abuse. Accordingly, the Board concluded that the reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by issuing him a new DD Form 214 which reflects that he served on active duty from 28 October to 14 December 1998 and on the latter date was discharged with an uncharacterized entry level separation by reason of erroneous entry-drug abuse.

b. That no other relief be granted.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together

with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made a part of Petitioner's naval record.

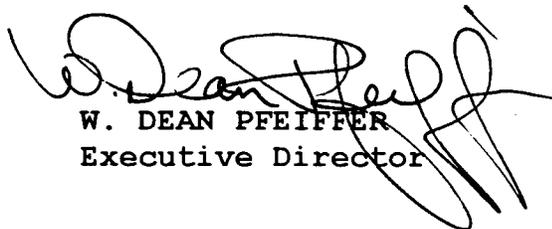
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. 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 Regulations, 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.



W. DEAN PFEIFFER
Executive Director