



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

ELP
Docket No. 6751-00
29 May 2000

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
(b) OPNAVINST 1160.5C
(c) NAVMILPERSMAN

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlistment member of the United States Navy, filed enclosure (a) with this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Messrs. Lightle, Taylor, and Geisler reviewed Petitioner's allegations of error and injustice on 16 May 2000 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. Although it appears that 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 reenlisted in the Navy on 31 August 1991 for six years as an EN3 (E-4). At the time of his reenlistment, he had completed more than six years of prior active service and the Bureau of Naval Personnel had authorized a selective reenlistment bonus (SRB).

d. Petitioner served without incident until 28 February 1983 when he received nonjudicial punishment for assault, breach of the peace, and use of provoking speech and gestures. Punishment imposed was a suspended reduction in rate to ENFN (E-3) and 30 days of restriction.

e. Petitioner continued to serve without further incident. However, on 23 June 1995, he was not recommended for reenlistment due to failure to meet the professional growth criteria for his pay grade. The record reflects that on 25 June 1995 he was honorably discharged as an EN3 by reason of "Completion of Required Active Service" and assigned an RE-4 reenlistment code. At that time, he received nearly \$16,000 in involuntary separation pay. However, his six year enlistment did not expire until 30 August 1997. No authorization for this early discharge is shown in the record. At the time of his discharge he had completed a total of 10 years and one day of active service.

f. Reference (b) provides that individuals serving in pay grade E-4 are eligible to reenlist or extend provided the total period of active service does not exceed the high-year tenure (HYT) limit of 10 years. Regulations authorize the assignment of an RE-6 reenlistment code to individuals who are denied reenlistment because of HYT.

g. Article 3620280 of reference (c), in effect at the time of Petitioner's separation, stated that an individual could be separated by reason of erroneous reenlistment if the reenlistment would not have occurred had the relevant facts been known, it did not occur due to fraud by the individual, and the defect is unchanged since the time of reenlistment. Prior to separation, the individual must be afforded certain procedural rights, such as notification and an opportunity to respond. Since Petitioner had more than six years of service, he was entitled to present his case to an administrative discharge board (ADB). If an individual objected to separation, such action could only be directed by Pers-254, the predecessor to Pers-814.

h. At enclosure (1), an advisory opinion from the Favorable Enlisted Separations Section of the Navy Personnel

Command (Pers-814) states that Petitioner was authorized a six year reenlistment for selected reenlistment bonus. However, Pers-814 also states that individuals who reenlist or extend beyond their HYT date are technically on an erroneous contract, but are allowed to remain on active duty until they reach their high year tenure date. Pers-814 concludes that Petitioner was appropriately discharged since his record does not reflect a HYT waiver. Pers-814 does recommend that Petitioner's reenlistment code be changed to RE-6.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Messrs. Lightle and Geisler, concludes that Petitioner's request warrants favorable action. In this regard, the majority substantially concurs with the advisory opinion that Petitioner was appropriately discharged, but also agrees but that the reenlistment code should be changed to RE-6. Along these lines, the majority also notes that Petitioner did not request any further corrective action.

MAJORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected by changing the RE-4 reenlistment code, assigned on 25 June 1995, to RE-6.
- b. That no further 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.

MINORITY CONCLUSION:

The minority member, Mr. Taylor, agrees with the majority that Petitioner's request should be granted by changing his reenlistment code from RE-4 to RE-6. However, he also believes that Petitioner's discharge was improper and should be set aside, despite the fact that he did not request such relief.

The minority member begins his analysis by noting that the narrative reason for separation now of record, "completion of required active service," is clearly incorrect. This reason for separation is used when an individual is discharged after completing an enlistment or period of obligated service. At the time of his discharge, Petitioner had completed only four years of his six year reenlistment. Hence, separation for the foregoing reason was improper.

Pers-814 essentially proposes that since Petitioner's reenlistment was erroneous to begin with, in that he was permitted to reenlist for six years instead of the four years authorized by regulations, his discharge on 25 June 1995 may be deemed proper. The minority member cannot agree. Prior to separating Petitioner by reason of erroneous reenlistment, the command would have been required to comply with the procedural requirements of Article 3620280. Clearly, the command did not do so. Had there been such compliance, the minority is unwilling to conclude that Petitioner would necessarily have been separated. An ADB could have and might well have recommended his retention in the Navy, given his overall good performance. Further, if Petitioner had objected to separation, the command could not have taken such action and the case would have been forwarded to Pers-254 for final action.

Accordingly, the minority member concludes that the command committed prejudicial error by discharging Petitioner on 25 June 1995. Therefore, the record should be corrected to show that Petitioner was not discharged on that date but continued to served until the expiration of his enlistment on 30 August 1997.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was no discharged on 25 June 1995 with an RE-4 reenlistment code, but continued to serve without interruption until 30 August 1997 when he was honorably discharged with an RE-6 reenlistment code.

b. That such adjustments as appropriate be made in his involuntary separation pay.

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.

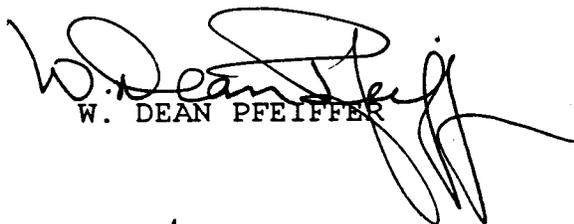
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

ALAN E. GOLDSMITH
Acting Recorder

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



W. DEAN PFEIFFER

MAJORITY REPORT:
Reviewed and approved:



JOSEPH G. LYNCH
Assistant General Counsel

MINORITY REPORT:
Reviewed and approved (Manpower And Reserve Affairs)

JUL 10 2001