



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

ELP
Docket No. 348-02
23 May 2002

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 his reenlistment code be changed.

2. The Board, consisting of Messrs. Tew, Frankfurt, and Carlsen reviewed Petitioner's allegations of error and injustice on 22 May 2002 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 24 January 2000 for four years at age 22. At that time, he extended his enlistment for an additional period of 12 months in exchange for an air traffic controller school guarantee.

d. On 8 June 2000 Petitioner was notified that separation processing was being initiated due to defective enlistment. 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.

e. On 29 June 2000 the discharge authority directed discharge by reason of defective enlistment. The discharge authority stated that upon Petitioner's arrival at air traffic controller school, it was determined that he did not qualify for the school due to defective color vision. Petitioner did not desire any other rating and requested separation. The discharge authority further stated that Petitioner was being separated with an uncharacterized entry level separation. However, on the same day, Petitioner received a general discharge by reason of defective enlistment and was assigned an RE-4 reenlistment code.

f. Regulations provide that individuals separated by reason of defective enlistment will receive an honorable characterization of service, unless an uncharacterized entry level separation is warranted, due to separation action being initiated within the first 180 days of continuous active duty. An honorable characterization is authorized only if an individual's period of service was so extraordinary that any other characterization would be inappropriate. Regulations authorize the assignment of an RE-R1, RE-1, RE-3R, RE-4, and RE-6 to individuals separated by reason of defective enlistment. Codes RE-R1, RE-3R, and RE-6 are not applicable in this case. An RE-1 reenlistment code means an individual is eligible for reenlistment. An RE-4 reenlistment code means an individual is not eligible for reenlistment without prior approval of Commander, Navy Personnel Command.

g. Petitioner states that he tried to get his reenlistment code corrected by the separation activity subsequent to his discharge. He provides a copy of an e-mail from the executive officer, who states that the personnel support detachment (PSD) assigned him the wrong RE code. An e-mail on 5 October 2001, from the legal officer to Petitioner, stated that he had gotten the general discharge changed to an uncharacterized entry level separation, and the PSD would be sending a correction. However, the RE-4 reenlistment code could not be changed without filing a DD Form 149 with this Board. Petitioner has advised a staff

member of the Board that he never received anything from the PSD correcting the characterization on his DD Form 214. The PSD advised a staff member of the Board that it had no record of issuing any corrections to Petitioner's DD Form 214.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that since discharge proceedings were initiated within the first 180 days of active service, Petitioner was erroneously separated with a general discharge vice an uncharacterized entry level separation as required by regulations. The Board notes also that defective color vision is not disqualifying for service, but is disqualifying for the air traffic controller field and that Petitioner elected separation since there was no other occupational field he desired. Given the circumstances surrounding his discharge, and since there is no evidence of any performance or discipline problems during Petitioner's short period of service, the Board concludes that assignment of an RE-4 reenlistment code was inappropriate. Accordingly, it would be appropriate and just to show that Petitioner was discharged with an uncharacterized entry level separation and assigned an RE-1 reenlistment code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was discharged with an uncharacterized entry level separation by reason of defective enlistment with an RE-1 reenlistment code, vice the general discharge and RE-4 reenlistment code now of record.

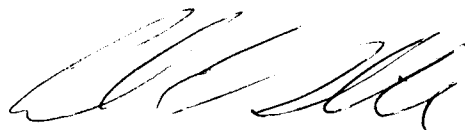
b. That the material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of the Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references being made part of Petitioner's naval record.

d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 15 January 2002.


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.



For W. DEAN PFEIFFER
Executive Director