



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

TRG
Docket No: 1853-02
8 August 2003

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

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

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member in the Naval Reserve, filed an application with this Board requesting that his record be corrected to show additional active service and that additional allowances and full separation pay be authorized.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 July 2003 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 was filed in a timely manner.

c. Petitioner reenlisted in the Navy for three years on 29 July 1994. On 21 February 1997, Petitioner was honorably discharged by reason of weight control failure and was assigned an RE-4 reenlistment code. At that time, he was paid one half separation pay.

d. Petitioner applied to the Board in 2000 contending that he had been improperly discharged. Attached to enclosure (1) is the Board's Report of Proceedings in Petitioner's case. The Board considered an advisory opinion that concluded Petitioner was discharged in error. The Board was aware that when a discharge is found to be in error, an individual is only entitled to service until the expiration of the enlistment in which they

were serving at the time of discharge. In Petitioner's case the expiration date of his three year enlistment was 28 July 1997. After review, the Board agreed with the comments contained in the advisory opinion and concluded, in part, as follows:

.... The Board notes that Petitioner actually failed the body fat composition standards but these failures cannot be counted as such for technical reasons. However, given the circumstances, the Board agrees with the advisory opinions that Petitioner should not have been discharged due to weight control failure on 21 February 1997. Therefore, the record should be corrected to show that he was not discharged on 21 February 1997 but continued to serve on active duty until the expiration of his enlistment on 28 July 1987. His discharge on that date should be considered to be involuntary to prevent recoupment of the separation pay he already has received.

Concerning the reenlistment code to be assigned, the Board concludes that since the body composition assessments cannot be used for discharge processing, they cannot be used in the assignment of the RE-4 reenlistment code. Accordingly, the reenlistment code assigned on 28 July 1997 should be RE-1. However, Petitioner will have to meet weight standards before reenlistment will be authorized.

Petitioner's record has been corrected to show that he was honorably discharged on 28 July 1997 by reason of "completion of required active service" with a Separation Program Designator (SPD) code of JBK and an RE-1 reenlistment code.

e. Petitioner enlisted in the Naval Reserve on 31 October 2001 and has served in an excellent manner since then although his attempts to reenlist in the Regular Navy have been unsuccessful.

f. Petitioner is now requesting that the record be corrected to show that he had no break in service from 21 February 1997 until he reenlisted in the Naval Reserve on 31 October 2001; that he be advanced to petty officer first class, and that he be restored to active duty in that grade. He contends, in effect that the errors made in his case were so egregious that this extraordinary relief is warranted. He is also requesting that the Defense Finance and Accounting Service (DFAS) be directed to pay him basic allowance for quarters (BAQ) and variable housing allowance (VHA) from 21 February 1997 until 28 July 1997. He is also requesting full separation pay. He has

provided a copy of a letter from DFAS, Denver that states, in effect, that he is not entitled to full separation pay because the Board did not specifically direct a change in the SPD code. The letter also states that he is not entitled to BAQ and VHA because the Board did not issue him permanent change of station orders to his home of record.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. Concerning his request for additional service, advancement and restoration to active duty, the courts have consistently held that there is no right to reenlistment and an individual is only entitled to service until the end of the enlistment on which he/she was serving at the time of discharge. Therefore, the Board concludes that the Board's previous action provides sufficient relief and that portion of his request is denied.

Concerning the pay issues, it is clear that he is entitled to the same pay and allowances he was receiving at the time of his erroneous discharge until his discharge at the expiration of his enlistment. Further, his discharge entitles him to travel to his home of record and shipment of household goods. The Board believes that these entitlements are implicit in the Board's decision and action by the Board is not required.

Concerning the separation pay issue, the Board's action to show service until the expiration of his enlistment and an involuntary discharge resulted in a narrative reason for discharge of completion of required active service. The SPD code associated with this reason for discharge is JFK and the corrected DD Form 214 reflects that SPD code. The Board believes that the corrected DD Form 214 would normally be sufficient to support the payment of full separation pay without further Board action. However, the Board's previous action might be confusing because it only discusses recoupment of the amount of separation pay already paid. Therefore, the Board believes that the separation pay issue needs to be specifically addressed and concludes that the record should be corrected to show that he is entitled to full separation pay on 28 July 1997.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he is entitled to full separation pay on 28 July 1997 vice the one half separation pay now of record.
- b. That the remainder of his requests be denied.

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