



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

TRG
Docket No: 1990-02
11 April 2002

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) Copy of DD Form 214 and other service record documents

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps filed an application with this Board requesting that his record be corrected by changing the reason for his separation.
2. The Board, consisting of Mr. Pauling, Mr. Mackey and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 9 April 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, and applicable statutes, regulations and policies. The Board was unable to obtain Petitioner's service record and conducted its review based on documentation he submitted.
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 Petitioner's application 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 enlisted in the Marine Corps on 24 August 1998 at age 19. Two days later during the "Moment of Truth", he admitted to preservice episodes of depression, with no suicidal thoughts or ideations, from 16 August 1994 through 3 April 1995. He also said that during this period, he was prescribed a variety of antidepressant medications. That same day, the medical disposition officer concluded that the history of psychiatric treatment for depression was disqualifying for active service Directive 6130.2, and it would have been disqualifying at the

Military Entrance Processing Station (MEPS), had all the facts been known at the time of the enlistment physical examination. Petitioner was dropped from recruit training on 27 August 1998.

d. On 28 August 1998 Petitioner was notified of separation processing by reason of fraudulent enlistment. In connection with this processing, he elected to waive his procedural rights. After review by the separation authority, an entry level separation by reason of fraudulent enlistment was directed and he was so separated on 4 September 1998. At that time he was assigned an RE-3P reenlistment code.

e. Petitioner states in his application that he told the recruiter about the treatment for depression, and that he had no similar problems since April 1995. The recruiter then allegedly told him that in order to become a Marine, he should not tell anyone about his treatment for depression. Petitioner further contends that he acted on this advice by answering "no" to the pertinent questions on his medical history form (SF 93) and remaining silent during his physical examination at MEPS. Evidence has been submitted showing that Petitioner has been active in his church and a successful college student since his separation from the Marine Corps.

d. Petitioner's father has submitted a statement to the effect that he and his wife discussed their son's treatment for depression with the recruiter, and he told them that Petitioner was eligible for enlistment since he had no further problems and was not on medication. The father also corroborates Petitioner's statement that he had discussed his treatment with the recruiter and was told not to worry about it.

e. Regulations state that the SF 93 shall not be used as a basis for processing a recruit for separation due to fraudulent enlistment. Since Petitioner's record is unavailable, it is unclear whether he indicated that he was not treated for depression on some other document. The regulations also allow for separation by reason of erroneous enlistment when there is a factor which had it been known would have prevented enlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner's recruiter may have encouraged him to lie on his pre-enlistment documents, and the SF 93 cannot be used for processing due to fraudulent enlistment, the Board concludes that a more appropriate reason for separation is erroneous enlistment. In other words, if his preservice treatment for

depression had been known he would not have been enlisted. The Board further concludes that the reenlistment code should remain RE-3P.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 4 September 1998 he received an entry level separation by reason of erroneous enlistment with an RE-3P reenlistment code vice the reason of fraudulent enlistment now of record.

b. 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. 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