



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

WMP  
Docket No. 4812-02  
11 September 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) Case Summary  
(2) 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, changes in his characterization of service and reenlistment code.

2. The Board, consisting of Messrs. Zsalman, Pfeiffer, and Pauling, reviewed Petitioner's allegations of error and injustice on 28 August 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. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the best interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Delay Entry Program of the Naval Reserve on 3 February 1986. At that time, he admitted that prior to enlistment he had paid a fine for hunting out of season. He denied any other pre-service civil involvement.

d. Petitioner enlisted in the Navy on 2 April 1986 at age 18. On 2 June 1986, Recruit Training Center (RTC) advised the Commander, Naval Military Personnel Command (CNMPC) that

Petitioner had failed to fully disclose his prior involvement with civil authorities. This involvement included two months in a divisional youth program for a burglary, an incident in which he was held but not charged concerning a burglary, and one year of unsupervised probation on a charge of accessory to stealing gasoline. At that the time of the investigation, Petitioner alleged that his recruiter told him not to reveal this pre-service involvement.

e. The commanding officer then opined that further separation processing was not in the best interest of the Naval service, and stated that Petitioner would be transferred to his next duty station upon completion of recruit training. However, on 1 July 1986, CNMPC directed separation processing by reason of fraudulent enlistment.

f. Petitioner reported for duty on board the USS DETROIT on 10 September 1986 and was subsequently advanced to seaman apprentice (E-2). On 25 December 1986, CNMPC requested the status of the separation processing directed on 1 July 1986. The CO of the DETROIT responded that when Petitioner reported on board, the RTC letter of 2 June 1986 was in his service record, but the ship was unaware of NMPC's directive to process him for separation. The CO noted that he had been on unauthorized absence (UA) since 18 December 1986.

g. On 28 January 1987 Petitioner received nonjudicial punishment (NJP) for three periods of UA totaling about 23 days, from 18 December 1986 to 4 January 1987, 11-12 January and 19-25 January 1987; absence from his appointed place of duty; missing ship's movement; and disobedience. Punishment imposed was reduction to paygrade E-1, forfeitures of \$350 per month for two months, and 45 days of restriction and extra duty. On the same day as Petitioner's NJP, CNMPC directed that he be processed for separation by reason of defective enlistment due to fraudulent entry and misconduct as appropriate.

h. On 11 February 1987 Petitioner was notified that administrative separation action was being initiated by reason of misconduct due to commission of a serious offense and fraudulent entry. He was advised of his procedural rights and that if discharge was approved, it could be under other than honorable conditions. Petitioner declined to consult with counsel and waived his right to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions. On 25 February 1987, CNMPC directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. Petitioner was so discharged on 3 March 1987.

i. On 10 April 2002 the Board initially considered and denied Petitioner's request for a change in the characterization of his service.

j. In May 2002, through counsel, Petitioner requested that the Board reconsider his case. In support of that request, counsel presented a legal brief and numerous statements, including one from a detective which casts doubt on the validity of the pre-service civil charges that ultimately resulted in administrative separation processing. Additionally, there was no evidence to indicate whether the Commander, Navy Recruiting Command investigated Petitioner's allegation that he informed his recruiter concerning all of his pre-service civil involvement.

k. Along with his application, Petitioner has submitted evidence of good post-service conduct, including successful completion of college courses in law enforcement. However, the characterization of his service prevents him from working in that field in his home state.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

After reviewing the relevant evidence of record and new information concerning Petitioner's pre-service civil involvement, the Board believes that Petitioner was processed for administrative separation directly as a result of his pre-service civil involvement. However, available records, including the statement of the detective, cast some doubt on the veracity and seriousness of these charges. Further, it appears there was no investigation of recruiter malpractice to determine if Petitioner did inform recruiting personnel of this existence of his pre-service civil involvement. The Board also questions whether he would have been processed for administrative separation due to commission of a serious offense solely based on the one NJP. In this regard, the Board is aware that such processing was proper under the regulations then in effect, but believes that he might have been given another chance. Taking all of the foregoing into consideration, the Board believes that although Petitioner was appropriately processed for separation, the other than honorable discharge was unduly harsh and should be changed to a general discharge.

However, regulations require the assignment of an RE-4 reenlistment code when a servicemember is discharged by reason of misconduct. Accordingly, the Board concludes that no change in the reenlistment code is warranted.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that On 3 March 1987 he received a general discharge vice the other than honorable discharge actually issued.

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.

c. 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 reference 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.

  
FOR W. DEAN PFEIFFER  
Executive Director