



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

CRS
Docket No: 8686-02
14 October 2003

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, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the general discharge issued on 6 April 2001. Additionally, he requests that his RE-4 reenlistment code be changed.

2. The Board, consisting of Messrs. [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 September 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Naval Reserve on 8 December 1995. He enlisted in the Navy on 29 December 1998 for four years, and subsequently extended that enlistment for 12 months. The record reflects that up until the events that resulted in separation, Petitioner served satisfactorily. At that time, he was serving as a constructionman (SWCN; E-3), but had been frocked to petty officer third class (SW3; E-4). Petitioner has submitted copies of the two enlisted evaluations he received

after enlisting in the Navy, both of which assigned satisfactory marks and recommended him for advancement and retention.

d. On 18 January 2001 the Navy Personnel Command informed Petitioner's command that he had failed to disclose a warrant for his arrest that was issued on 25 August 1995.

e. On 21 February 2001 the commanding officer directed Petitioner's separation based on concealment of preservice civil involvement. On 6 April 2001 he received a general discharge by reason of fraudulent enlistment. At that time, he was assigned a reenlistment code of RE-4.

f. With his application, Petitioner submitted a letter from the Assistant State's Attorney of Jackson County, Illinois, that states, in effect, that the warrant was issued for another individual with Petitioner's name, but with a different date of birth. In his application, Petitioner claims that he knew nothing about the warrant.

g. An advisory opinion from the Navy Personnel Command, dated 9 December 2002, states that Petitioner was discharged on erroneous information and should be granted full relief.

h. An individual may be separated by reason of fraudulent enlistment if there is a false representation or deliberate concealment of a disqualifying factor. An individual separated for this reason receives either a general discharge or a discharge under honorable conditions. An RE-4 reenlistment code is required under such circumstances. An individual may be separated by best interest of the service, with an honorable or general discharge, if separation is appropriate but no other reason covers the situation at hand. Individuals separated for this reason may receive a reenlistment code of RE-R1, RE-1, or RE-4.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. In this regard, the Board believes that the reason for Petitioner's discharge should be changed to best interest of the service since he was unaware of the warrant for his arrest and the warrant was for another person. Further, given his excellent performance of duty and satisfactory marks, he should receive an honorable discharge. Finally, the RE-4 reenlistment code appears to be unjust given his overall record and since he did not fraudulently enlist. Accordingly, the reenlistment code should be changed to RE-1.

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

RECOMMENDATION:

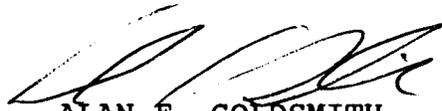
a. That Petitioner's naval record be corrected to show that on 6 April 2001 he was issued an honorable discharge by reason of best interest of the service with an RE-1 reenlistment code, vice the general discharge by reason of fraudulent enlistment and RE-4 reenlistment code actually issued on that date.

b. 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 Correctio 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