



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

Docket No: 10307-05
30 March 2007

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, a former enlisted member of the Navy, filed an application with this Board requesting reinstatement in the Navy or a change in his reenlistment code. In the alternative, he requests a correction to his record so that separation pay will be authorized.
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 March 2007 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 on 6 April 2001 after more than five years of prior active service. The quality of his service through early 2005 is shown by the three consecutive excellent performance evaluations, he received during the period from 16 January 2003 to 16 March 2005. Those evaluations show individual trait averages (ITA's) of 3.43, 4.14 and 4.14 with laudatory comments. Further, on 28 August 2004, he was awarded a Joint Service Commendation Medal.
 - d. The evaluation for the period 16 March to 20 September 2005 is adverse with an ITA of 1.67 and he was not recommended for promotion or retention in the Navy. The evaluation comments

state, in part, as follows:

Although He) was previously recommended for retention, his conduct has resulted in a reversal of that recommendation. (He) is indebted to the government for overpayment of BAH (Basic Allowance for Housing) in the amount of \$21,000.00. He made no effort to take responsibility or to rectify this debt. He submitted a waiver request for the debt which was uniformly denied by his chain of command. In August, the command was notified that (he) was indebted to the government for overpayment of TAD (Temporary Additional Duty) funds in the amount of \$5,343.00. Although he was notified of this in January 2005, he did not inform his chain of command or make any effort to resolve the problem. (He) is unable to meet current ... working hour requirements due to family care issues ... (He) is an administrative burden to this command due to his poor judgment, financial problems, and noncompliance with rules and regulations with no observable contribution to the United States Navy. He is not recommended for retention or advancement.

e. Petitioner was honorably discharged on 19 October 2005 at the expiration of his enlistment, as extended. The narrative reason for separation is completion of required active service. The separation program designator (SPD) code is "KBK" which indicates his discharge was voluntary. He was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

f. Petitioner states that his command was out to get him because they thought there was fraud involved in the overpayments he received. He states that an investigation resulted in the fraud charges being dropped. He believes that the command was angry about the dismissal of the fraud charges and made sure that his request for a waiver of the indebtedness was denied. He also attempts to rebut the other negative comments in the evaluation. However, he has not submitted any evidence to support any of his contentions.

g. Petitioner is not eligible for the payment of separation pay because his SPD code of KBK indicates his separation was voluntary. An involuntary SPD code of JBK would authorize full separation pay. The regulations allow for the payment of one half separation pay if an individual is discharged by reason of "nonretention on active duty" with a SPD of "JGH".

CONCLUSION:

Upon review and consideration of all the evidence of record the

Board concludes that Petitioner's request warrants partial favorable action. It is clear that Petitioner was overpaid in excess of \$26,000. An overpayment of this amount certainly suggests that Petitioner knew or should have known that there was a problem with his pay account. Further, according to his command, he did not take adequate measures to rectify the situation. Given the circumstances, the Board concludes that this matter was properly mentioned in the performance evaluation and was sufficient to support denial of reenlistment and assignment of the RE-4 reenlistment code.

However, Petitioner served for over nine years on active duty up until on or about 16 March 2005, a period of more than nine years. Accordingly, the Board concludes that he should have received separation pay upon discharge.. The negative comments in the last performance evaluation and the assignment of the RE-4 reenlistment code make the award of one half separation pay appropriate in this case. Of course, the separation pay can be used to offset any remaining indebtedness to the Navy. This action can be accomplished by changing the narrative reason for separation to nonretention on active duty and the SPD code to JGH.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the rationale for the payment of one half separation pay.

RECOMMENDATION:

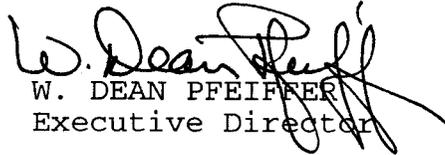
- a. That Petitioner's naval record be corrected to show that on 10 October 2005, he was discharged by reason of nonretention on active duty with an SPD code of JGH.
- b. That the remainder of Petitioner's requests be denied.
- c. That this Report of Proceedings be filed in Petitioner's naval record.
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