



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

JRE  
Docket No. 10687-06  
4 February 2008

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: FORMER [REDACTED] REVIEW  
OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he is entitled to separation pay, was retired by reason of physical disability, and is not required to repay the unearned portion of his selective reenlistment bonus. Alternatively, he requests that he be allowed to enlist in the Navy Reserve. He contends that he was not properly advised of the consequences of accepting his proposed discharge, and that he unsuccessfully attempted to withdraw his waiver of rights.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 December 2007, and pursuant to its regulations, determined that the partial 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 enlisted in the Navy on 6 July 1998. On 22 November 2005 he underwent sea duty screening to determine his suitability for assignment to the USS Enterprise. He was noted to be suffering from chronic plantar fasciitis, elevated cholesterol, and high blood pressure, as well newly diagnosed diabetes mellitus type II, which had not been treated as of that date. He was considered unsuitable for operational assignment until such time as the diabetes had been treated and was under control. On 6 December 2005, the Commander, Navy Personnel Command was notified of the foregoing. On 12 December 2005, the Chief, Bureau of Naval Personnel (BUPERS) directed that Petitioner be processed for administrative separation for the convenience of the government within thirty days of that date. On 21 December 2005, Petitioner was advised that he could be subject to administrative separation action unless he became suitable for operational duty no later than 30 December 2005. Petitioner was reevaluated by a physician on 22 December 2005 and found unsuitable for world wide service.

c. On 29 December 2005, Petitioner was advised of his rights in connection with his proposed separation for the convenience of the government, and waived those rights, to include representation by counsel and an appearance before an administrative separation board to contest the proposed action. On 5 January 2006, the discharge authority directed that Petitioner be discharged for the convenience of the government by reason of a condition, not a disability, which interfered with his performance of duty, and that he be assigned a reentry code of RE-3G. That code indicates that he requires a waiver in order to be eligible for reenlistment. The discharge authority also directed that unearned bonus payments, if any, be recouped. Petitioner underwent a pre-separation physical examination on 12 January 2006 and was found physically qualified for separation notwithstanding his high cholesterol, high blood pressure and diabetes mellitus. He was 6'1" tall, and weighed approximately 240 lbs at that time. Petitioner was discharged on 13 January 2006, having completed 7 years, 6 months and 8 days of service. He was entitled to one-half separation pay, in the amount of \$10,231.65. The unearned portion of a selective reenlistment bonus (SRB) in the amount of \$10,231.16 was recouped. On 28 October 2006, he was advised by the Defense Finance and Accounting Center that he was indebted to the government in the amount of \$1,069.60.

d. On 23 May 2006, the Department of Veterans Affairs (VA) awarded Petitioner a combined disability rating of 40% for a

fungal infection, diabetes, hypertension, and conditions of both of his feet and right knee.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner has failed to demonstrate that he was unfit for duty by reason of physical disability at the time of his discharge from the Navy. As noted above, he was examined on 12 January 2006 and found physically qualified for separation. The fact that he received disability ratings from the VA is not probative of error in his Navy record, because the VA assigns such ratings without regard to the issue of fitness for military duty. The Board also concludes that Petitioner has not established that it would be in the interest of justice to forgive the recoupment of the unearned portion of his SRB.

The Board concludes further, however, that Petitioner's discharge for the convenience of the government by reason of a condition not a disability which interfered with his performance of duty was unfair. In this regard, it finds that Petitioner, who performed his duties in an excellent manner for more than seven years, was not given sufficient time to bring his blood pressure, cholesterol and newly diagnosed type II diabetes under control before being processed for separation. In addition, the Board finds that Petitioner's waiver of the right to appear before an administrative separation board to contest his discharge was ill-advised. Accordingly, it finds that it would be in the interest of justice to change the basis for his separation and authorize him full separation pay. The Board does not believe it to be in the interest of justice to amend his reentry code to one which would permit him to reenlist without first obtaining a waiver, given his numerous, potentially disqualifying medical conditions for which he is receiving disability compensation from the Department of Veterans Affairs

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged on 13 January 2006 by reason of Secretarial Plenary Authority, with entitlement to full separation pay.

b. That so much of his request for separation action as exceeds the foregoing be denied.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

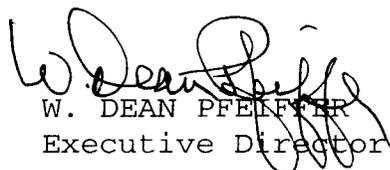
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



JAMES R. EXNICIOS  
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