



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

HD:hd
Docket No. 03295-07
27 January 2008

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 21 Mar 07 w/attachment
(2) PERS-311 memo dtd 12 Jul 07
(3) PERS-832 memo dtd 23 Aug 07 w/enclosures
(4) PERS-00J2 ltr dtd 28 Dec 07
(5) PERS-N134 memo dtd 24 Oct 07
(6) Subject's ltr dtd 10 Jan 08 w/enclosures
(7) 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 by removing the enlisted performance evaluation report for 16 March 2005 to 15 March 2006. A copy of this report is at Tab A. This report is not in his Official Military Personnel File (OMPF). He further requested that his reenlistment code be changed from RE-4 (not eligible for reenlistment without prior approval of the Chief of Naval Personnel) to RE-1 (eligible for reenlistment) and that he be reinstated to active duty in the U. S. Navy with no break in service. He was discharged on 19 May 2006 by reason of "Non-retention on Active Duty," with a corresponding separation code of "JGH" (copy of DD Form 214 ("Certificate of Release or Discharge from Active Duty") at Tab B).

2. The Board, consisting of Mes. Epstein and LeBlanc and Mr. Washington, reviewed Petitioner's allegations of error and injustice on 25 January 2008, 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. In enclosure (2), PERS-311, the Navy Personnel Command (NPC) office with cognizance over performance evaluations, commented to the effect that the contested adverse performance evaluation report is valid, but that it does not appear in Petitioner's OMPF. They recommended that he be asked to provide a signed copy for inclusion in his OMPF; that he submit a ~~statement if he so desires, and that no further action regarding~~ this report be taken.

c. In enclosure (3), PERS-832, the NPC Enlisted Performance and Separations Branch, commented to the effect that no relief is recommended concerning the contested performance evaluation report or the denial of Petitioner's reenlistment.

d. In enclosure (4), PERS-00J2, the NPC legal office, effectively concurred with enclosures (2) and (3), stating "Whether there is evidence to substantiate [Petitioner's] allegations of reprisal [for having filed a complaint in 2005 under Article 138, Uniform Code of Military Justice, concerning the reporting senior's failure to forward his humanitarian reassignment package] is speculative" and "...given the absence of evidence to support [Petitioner's] contentions, any relief granted should be based on equity."

e. In enclosure (5), PERS-N134, the Navy Equal Opportunity Office, commented to the effect that if Petitioner's parenthood certificate situation is resolved, he should be allowed to reenlist. They stated they were convinced Petitioner's reporting senior failed to provide a work environment that fostered equal opportunity; that they believed Petitioner received ineffective leadership and mentoring from him; that it is quite possible Petitioner's bar to reenlistment, the contested adverse report, resulted from the Article 138 complaint; and that the reporting senior's recommendation against Petitioner's reenlistment by reason of "overall performance and re-occurring [sic] dependency care plan issues" could have been his "subtle approach to taking reprisal action" against Petitioner. Although the PERS-N134 opinion was

submitted before PERS-00J submitted enclosure (4), enclosure (4) does not acknowledge it.

f. In enclosure (6), Petitioner reiterated his position that he deserved to be recommended for reenlistment. He argued that he should not have been discharged without an administrative separation board; but since he was discharged at the expiration of his active obligated service, he had no board entitlement.

CONCLUSION:

Upon review and consideration of all the evidence of record, ~~notwithstanding enclosures (2) through (4), and especially in~~ light of enclosure (5), the Board finds the existence of an injustice warranting corrective action to show Petitioner was not discharged, but rather extended for two years; and block filing of the contested performance evaluation report in his naval record.

While the Board does not consider it appropriate to usurp the function of determining whether Petitioner was fully suitable for reenlistment, it is satisfied he should not have been discharged. Accordingly, the Board finds his record should be corrected to show he was not discharged, but rather executed a two-year extension, which will give him an opportunity to demonstrate he should be permitted to reenlist at the end of the extension. The Board notes this will effectively remove the reenlistment code of RE-4, as it will require removing the DD Form 214 reflecting Petitioner's discharge and the reenlistment code.

In views of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was not discharged on 19 May 2006, but rather executed a two-year extension of enlistment; and that the DD Form 214 reflecting the discharge of 19 May 2006, together with any service record page 13 ("Administrative Remarks") entry dated on or about 15 March 2006 reflecting a recommendation against his retention or withdrawal of his recommendation for advancement, be removed accordingly.

b. That Petitioner's enlisted performance evaluation report for 16 March 2005 to 15 March 2006, dated 15 March 2006 and signed by [REDACTED] be filed in his naval record.

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.

d. 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


JONATHAN S. RUSKIN
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