



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

Docket No: 1691-08
29 December 2008

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, an enlisted member of the Navy, filed an application with this Board requesting removal from his record of documentation showing that he received a general discharge from the Navy Reserve on 12 September 2003.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 December 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. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner enlisted in the Navy Reserve on 13 April 2002. On 25 January 2003 he signed an agreement to enlist in the Regular Navy for a bonus. On 15 March 2003 he signed a request for a conditional release from his Navy Reserve enlistment contract. The conditional release form was signed by the recruiter and was approved by an individual with the title of executive officer. There is no delayed entry contract filed in his record.

d. Apparently the reserve unit was unaware of the

conditional release because on 4 June 2003 he was notified of discharge processing due to unsatisfactory participation in the Navy Reserve. It is unclear from the record whether or not he received this notification. Since he did not respond, the commanding officer recommended a general discharge. After review, the Navy Personnel Command directed a general discharge and he was separated on 12 September 2003.

e. On 19 September 2003 Petitioner enlisted in the Navy for four years with a one year extension. Since then he has served on active duty in an excellent manner.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Although it appears that Petitioner should have ensured that the reserve unit was aware of his status, it is also clear that there is what appears to be a properly completed conditional release form in the record and the Board believes that it is the key document in this case. Given the circumstances and his subsequent excellent service in the Navy, the Board concludes that Petitioner's record should be corrected to show that on 16 March 2003 he was transferred to the Individual Ready Reserve (IRR) and remained in that status until he was honorably discharged on 19 September 2003 the day prior to his enlistment in the Regular Navy. All documentation concerning his discharge processing for unsatisfactory participation and the general discharge should be removed from his record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 16 March 2003 he was transferred to the IRR and remained in that status until he was honorably discharged on 18 September 2003.

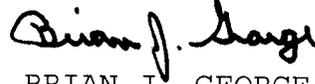
b. That Petitioner's record be further corrected by removing all documentation concerning the separation processing for unsatisfactory participation and the general discharge.

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 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


BRIAN J. GEORGE
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