



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

SMS
Docket No: 6595-08
8 December 2008

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) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, applied to this Board requesting to be reinstated in the Navy, change his RE-4 reenlistment code, and an honorable discharge vice the general discharge that he received on 12 June 2008.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 December 2008, 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. On 7 July 2005, Petitioner enlisted in the Navy at age 18. On 22 July 2006, he received a performance evaluation in which his individual trait average (ITA) was 3.67, and indicated that he must be promoted, and was recommended for retention. On 27 February 2007, he received another performance evaluation in which his ITA was 3.0, and he was recommended for promotion and retention. On 15 May 2007, he was convicted in civil court of speeding. On 16 October 2007, he was convicted in civil court of underage possession of

alcohol, public intoxication, and identity theft. His sentence included a restricted motor vehicle license, three years of probation, and six months in jail which was suspended on the condition that he perform 50 hours of community service. During February 2008, he received another performance evaluation in which his ITA was 3.67, that stated that he was ready for promotion to petty officer third class, and that he was recommended for retention. On 18 March 2008, he was convicted in civil court of reckless driving. On 4 April 2008, he appeared in civil court regarding his completion of community service, which resulted in the court authorizing him to depart the state. On that same date, his commanding officer initiated administrative separation by reason of misconduct due to civil conviction. In connection with this processing, Petitioner acknowledged that separation could result in a general discharge and elected to have his case reviewed by the general court-martial convening authority. On 7 April 2008, he received a performance evaluation which stated that he was being transferred to a transient personnel unit for administrative separation, that he was a valuable asset to the Navy, and was promotable, but was not recommended for retention. On 28 May 2008, the separation authority approved the discharge recommendation and directed a general discharge by reason of misconduct due to civil conviction. On 12 June 2008, he was so discharged and assigned an RE-4 reenlistment code.

c. In his application, Petitioner states in essence that he was convicted in civil court in June 2007, given probation and community service, and was then informed by his command to handle it and not let it interfere with work. He further states that he performed the community service as quickly as possible so that he could deploy with his ship during April 2007. As such, on 4 April 2007, the civil court acknowledged that he completed 50 hours of community service and authorized his travel outside of the state. He then returned to the ship, informed them that he was able to deploy, but was told that the ship's commanding officer already made the decision to administratively separate him. He further states that his chain of command in his parent division was not notified that he was being processed for discharge and believes that was very unprofessional. He further states that he has observed many other Sailors whose conduct was much more severe than his be retained and concludes that the ship's relief of the commanding officer and executive officer from their duties on 31 July 2008 further supports his belief that he may have been treated unfairly.

d. Regulations state that service members may be discharged by reason of misconduct due to civil conviction, if conviction of an offense results in fines, community service or six months or more of confinement without regard to suspension, probation or early release. Regulations direct the assignment of an RE-4 reenlistment code to service members who are discharged by reason of misconduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, the Board finds that Petitioner's discharge by reason of misconduct due to civil conviction met the requirements established by regulations. Nevertheless, the Board finds that other than his civil conviction for misdemeanor offenses that resulted in his discharge, he had two misdemeanor traffic convictions, but no military offenses. Furthermore, he consistently received favorable performance evaluations that found him to be a valuable asset to the Navy. Additionally, the Board finds merit to his contention that his chain of command directed him to complete the community service and not let it interfere with work commendable. In this regard, the record shows that he completed the required community service in about five months, returned to the ship to inform them of his status, but was informed that the ship's commanding officer initiated administrative separation on that very day. Moreover, the Board believes his civil convictions were not serious enough to warrant separation. Nevertheless, he should be held accountable for his misconduct and as such should not be reinstated on active duty in the Navy. Accordingly, given his overall service record, the Board concludes that Petitioner's record should be corrected to show that he was honorably discharged by reason of Secretarial authority on 12 June 2008, and assigned an RE-1 reenlistment code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of Secretarial authority on 12 June 2008, vice the general discharge by reason of misconduct due to civil conviction actually issued on that date.

b. That Petitioner's naval record be further corrected to show that he was assigned an RE-1 reenlistment code on 12 June 2008, vice the RE-4 actually issued on that date.

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


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 Regulation, 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

Copy to:
The Honorable 