



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

BAN
Docket No. 07481-08
22 December 2008

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Bureau of Naval Personnel memo 5420 BUPERS-3 of
30 Oct 08
(3) MILPERSMAN 1220-300

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 restoration of Petitioner's Navy Enlisted Classification Code (NEC) of 5335 (Senior Explosive Ordnance Disposal Technician).

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and George, reviewed Petitioner's allegations of error and injustice on 15 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. The Board also considered an Advisory Opinion furnished by the Bureau of Naval Personnel attached as enclosure (2) that recommended no relief be granted.

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 2004, Petitioner was assigned to the Explosive Ordnance Disposal (EOD) Mobile Unit Eleven, Whidbey Island, Washington, as a senior EOD technician. In August 2004, Petitioner was forward deployed to Iraq for six months as the Leading Petty Officer/Team Leader for his EOD detachment. See enclosure (1).

c. U.S. Central Command General Order #1, governs the policy for "war trophies" and prohibits the misappropriation of weapons or any part of a foreign-made weapon, as well as unit "war trophies". Additionally, Petitioner's immediate command prohibited the misappropriation of "war trophies". See enclosure (1).

d. Upon his return from Iraq, on 5 February 2005, Petitioner was arrested by the [REDACTED] Police. Evidence showed that he had illegally imported a fully functional automatic weapon (AK-47) to the United States and attempted to sell it at a [REDACTED] gun show.

e. On 9 May 2005, after consulting with counsel, Petitioner accepted non-judicial punishment (NJP) for failure to obey a lawful order or regulation, larceny, and wrongful disposition of military property. As punishment, he was reduced in rate to E-5. At the time of his offense, he had over 14 years of experience in the US Navy.

f. Petitioner's commanding officer at the time, [REDACTED], also recommended that Petitioner's NEC of 5335 be removed administratively due to his loss of confidence in Petitioner's trustworthiness and reliability. [REDACTED] believed that Petitioner had lost his ability to exercise the integrity required to handle arms, ammunitions, and explosives, in the line of duty as an EOD technician. At the time, [REDACTED] included a provision in the recommendation that stated "the member may not reapply for reinstatement for duty Diver/EOD/SEAL/ SWCC/UCT commands." See enclosure (3).¹

¹ Pursuant to MILPERSMAN 1220-300, recommendations to revoke NEC(s) shall include one or more of the following statements: (a) The member is considered suitable for assignment to rate or rating billets not requiring NEC [5335]. The member is suitable/unsuitable for duty in Diver/EOD/SEAL/UCT commands, (b) The member may reapply for reinstatement of NEC [5335] after completing at least 2 years assigned to a non-NEC billet, or (c) The member is considered unsuitable for reassignment and will be recommended for administrative discharge by separation action.

g. In accordance with [REDACTED] request and recommendation, BUPERS removed Petitioner's NEC in May 2005. Petitioner was subsequently transferred to submarine duty.

h. In June 2007, over two years after the NEC was removed, Petitioner administratively requested restoration of his NEC. To support his request, Petitioner included a favorable recommendation made by his former commanding officer [REDACTED] who now stated that he no longer believed Petitioner is unsuitable for duty as an EOD technician. In particular, [REDACTED] stated that Petitioner's "attitude, sense of humility and professional performance have greatly impressed me" and that "I have regained my confidence in [REDACTED] ability to serve as a leader in the EOD community and to do the right thing. Therefore, I fully support the recommendation that [REDACTED] be reinstated to his former NEC." Petitioner also included a favorable recommendation made by his then current commanding officer, [REDACTED]. [REDACTED] stated that he believed the offense for which Petitioner was punished was a "single lapse of judgment on an otherwise exceptional career encompassing service as an EOD technician earning the Bronze Star and Purple Heart awards." See enclosure (1).

i. Petitioner's request for restoration of his NEC was thereafter disapproved.

j. On 11 March 2008, Petitioner submitted a request to the Board for Corrections of Naval Records (BCNR) requesting restoration of his NEC, stating that he has overcome his mistake by diligence and hard work as witnessed by the statements of his former commanding officer, [REDACTED] and his current commanding officer, [REDACTED]. See enclosure (1).

k. In an advisory opinion, enclosure (2), the Bureau of Naval Personnel (BUPERS) recommends that no relief be granted. They reason that the Petitioner was fully aware of the rules and regulations in regards to importing illegal automatic weapons back to the United States and made a conscious decision to break the law. Additionally, BUPERS previously had concurred with [REDACTED] original decision in 2005 that the NEC was to be removed permanently. BUPERS also stated that current EOD E-6 manning is at 106%, NEC 5335 manning is at 96% and the Navy is not in need of senior EOD technicians at this time. The Commander, Navy Expeditionary Combat Command also recommends that no relief be granted stating "the nature of [REDACTED] documented misconduct precludes favorable action" on his request.

CONCLUSION:

Upon review and consideration of all the evidence of the record, the Board concludes that the request warrants favorable action. The Board finds that at the time of his offense, Petitioner knew fully well that his conduct violated orders and was otherwise illegal. The Board finds that Petitioner's misconduct was gravely serious and that substantial punishment as well as the administrative removal of his NEC were warranted. However, the Board also finds compelling evidence that in the years that have elapsed since the removal of his NEC, Petitioner has regained the trust of his commanding officers. The Board gave due consideration to the comments made by the Navy Personnel Command and the Commander, Navy Expeditionary Combat Command. However, in light of the favorable comments made by the Petitioner's immediate and former commanding officers, who know Petitioner best through close personal observation, the Board finds that Petitioner should be given a second chance (prospectively). Accordingly, the Board concludes that the record should be corrected to show that Petitioner's NEC 5335 is restored prospectively, with an effective date to be the date of final action on this request.

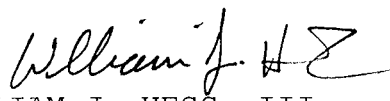
RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

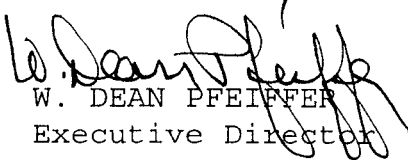
a. Petitioner's NEC 5335 (Senior Explosive Ordnance Disposal Technician) is restored prospectively. (Note, the effective date of the restoration is the date this action is approved by the designee of the Secretary of the Navy below).

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that 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.

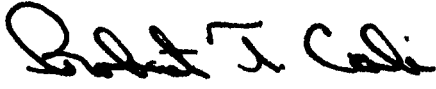
ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:


1-8-09

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)