



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

Docket No: 252-08
7 January 2008⁸⁹

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, a former member of the Navy Reserve, filed an application with this Board requesting that his reenlistment code be changed from RE-4 to RE-1.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 6 January 2009 and, pursuant to its regulations, determined that the limited 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's application was filed in a timely manner.

c. Petitioner enlisted in the Navy Reserve after over six years of active service in the Marine Corps. In March 2003 he was convicted by civil authorities of misdemeanor endangerment of a child and was sentenced to probation. He reenlisted in the Navy Reserve on 11 September 2004 in the rate of petty officer second class (SK2; paygrade E-5). His performance evaluation for the period ending 15 March 2005 is excellent with a recommendation for early promotion and retention.

d. On 11 July 2005 Petitioner was recalled for extended active duty. Apparently, the fact that he had been convicted by civil authorities was discovered about that time. On 21 December 2005 the Navy Personnel Command (NPC) directed that he be processed for separation due to erroneous enlistment because the

reenlistment would not have occurred if the Navy had been aware of his civil conviction. In the evaluation for the period ending 10 January 2006, Petitioner received a "must promote" and was recommended for retention.

e. An administrative discharge board met on 8 February 2006 and found that Petitioner's enlistment was erroneous and recommended an honorable discharge. Subsequently, the commanding officer recommended that he be retained in the Navy Reserve agreeing that the civil conviction issue should have been resolved prior to the reenlistment but noting that he had served well and that it was an isolated event in the life of an otherwise exemplary Sailor. However, NPC directed that he be discharged.

f. The performance evaluation for the period ending 15 March 2006 is a not observed report but it contains laudatory comments and Petitioner was highly recommended for reenlistment in the Navy Reserve. He was honorably discharged by reason of erroneous entry on 16 March 2006. At that time, he had completed over eight months of active duty. He was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

g. Petitioner states in his application that he has completed anger management training and has regained custody of his children. He has submitted excellent character references and been successfully employed since his discharge from the Navy Reserve. He desires a change in the reenlistment code so that he can again serve in the military.

h. Regulations allow for the assignment of an RE-3E or an RE-4 reenlistment code when an individual is discharged because of an erroneous enlistment. An RE-3E code may be waived and reenlistment authorized at the discretion of the service concerned.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. It is clear that Petitioner served very well in both the Marine Corps and the Navy Reserve for many years and was recommended for retention by his commanding officer. Further, it is clear that he has continued to be a good citizen. Given the circumstances, the Board concludes that although the separation processing was properly conducted, that in retrospect, an RE-3E reenlistment code would be more appropriate in this case since it will not preclude consideration for further service with knowledge of all the factors. Accordingly, his request for an RE-1 reenlistment code is denied.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reasons for the change in the reenlistment code.


RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 16 March 2006 he was assigned an RE-3E reenlistment code vice the RE-4 reenlistment code now of record.
- b. That Petitioner's request for the assignment of an RE-1 reenlistment code be denied.
- c. That 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 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