



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

RDZ:ecb  
Docket No. 06776-10  
8 July 2010

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

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

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

Encl: (1) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, initially applied to this Board requesting that the other than honorable discharge (OTH) issued to him on 13 March 1998 be upgraded. On 8 June 2010 his request was denied. Petitioner now requests that his record be corrected to show that he honorably completed his first enlistment so that he gain veterans preference status under the laws administered by the State of California. Petitioner is presently employed by the California Department of Water and Power.

2. The Board, consisting of Messrs George, Pfeiffer and Storz, reviewed Petitioner's allegations of error and injustice on 25 June 2010 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner first enlisted in the Navy on 26 July 1994 for a term of three years. Under the terms of his enlistment contract Petitioner's enlistment would have expired on 25 July 1997.

d. On 6 July 1997 Petitioner was issued an honorable discharge, some 19 days before the expiration of his enlistment. This was done to allow him to execute an early two year reenlistment contract which he did on the day immediately following his discharge. Since Petitioner's honorable discharge was conditionally issued for the purpose of immediate reenlistment it is not deemed to be a complete and unconditional break in service. As such a DD Form 214 was not issued.

e. A review of Petitioner's service record shows that from 26 July 1994 to his conditional discharge on 6 July 1997 he had no disciplinary infractions with military or civil authorities. Moreover on at least three occasions he was individually cited for superior performance of his military duties which resulted in his being promoted to damage controlman third class (DC3).

f. Unfortunately Petitioner's excellent record of service began to deteriorate a little over four months after his reenlistment with the onset of a series disciplinary actions that resulted in the issuance of an OTH on 13 March 1998. Petitioner was also issued a DD Form 214 showing that the entire period of his military service, beginning on 26 July 1994 and ending on 13 March 1998, was deemed to be under other than honorable conditions. In effect Petitioner receives no credit for a substantial period of good service that extended beyond the expiration of his first three year enlistment. It should also be noted that Petitioner's misconduct occurred over a period of less than 60 days out of total service time of over three years and seven months.

g. In similar past cases the Board has granted relief when it found that the interests of justice would be better served by taking remedial action.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. It is clear beyond any doubt that had Petitioner not executed an early reenlistment on 7 July 1997 he would have received an honorable discharge when his original enlistment expired on 25 July 1997. Throughout this period Petitioner's service was consistently excellent or higher. Additionally, although Petitioner's misconduct warranted the issuance of an OTH it is significant to note

that the underlying misconduct occurred over a relatively short period of time. Accordingly and in conformity with its past actions in similar cases the Board believes that Petitioner's record should be corrected by cancelling his discharge of 6 July 1997 and showing that he was honorably discharged on 25 July 1997 due to completion of his three year enlistment. A DD Form 214 should be issued setting forth this data as well as Petitioner's rate of DC3 and a reenlistment code of RE-1. Petitioner's record should be further corrected to show that he reenlisted on 26 July 1997 and served until he was separated with an OTH on 13 March 1998 due to misconduct. An amended DD Form 214 should be issued setting forth this data and showing that when Petitioner was discharged with an OTH on 13 March 1998 he was serving in the rate of DCFN and received an RE-4 reenlistment code.

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 Board's action.

RECOMMENDATION:

a. That Petitioner's discharge of 6 July 1997 be set aside and that his record be corrected to show that he was issued an honorable discharge on 25 July 1997 due to completion of obligated service. A DD Form 214 should be issued showing this information as well as Petitioner's rate as being DC3 with a reenlistment code of RE-1.

b. That Petitioner's record be further corrected to show that he reenlisted on 26 July 1997 and served until 13 March 1998 when he was separated with an other than discharge in the rate of DCFN and an RE-4 reenlistment code.

c. That a copy of this Report of Proceedings be filed in Petitioner's 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