



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

TJR  
Docket No: 1058-13  
18 December 2014

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) BUPERSINST 1900.8 (series)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) NDRB Decisional Docket ND09-01263  
(4) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting that his reenlistment code be changed.

2. The Board, consisting of Messrs. Gattis, O'Neill and Sproul, reviewed Petitioner's allegations of error and injustice on 16 December 2014 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to again waive the statute of limitations and review the application on its merits and in accordance with the court order to remand the case. Enclosures (3) and (4) apply.

c. In February 2007, prior to his enlistment in the Navy, Petitioner signed documentation which noted that he had a back injury at the age of 14. It was determined that, in spite of this injury, he was physically fit for training.

d. On 31 August 2007, at age 21, Petitioner enlisted in the Navy, served without disciplinary incident, and was advanced to paygrade E-3. At that time, he was found to be physically and medically fit for active duty training during an evaluation at the Military Entrance Processing Station (MEPS). The MEPS report did not reflect that Petitioner had a back injury at age 14.

c. In September 2007, Petitioner reported for a medical evaluation and advised the physician that he was experiencing back pain. In this regard, it appears that the physician obtain the medical report from MEPS (instead of a medical report from the Delayed Entry Program (DEP)) which did not reflect his disclosure of his back injury at the age of 14. As such, Petitioner was recommended for an administrative separation by reason of fraudulent entry.

d. Subsequently, Petitioner was processed for separation by reason of fraudulent entry. The discharge authority directed discharge under honorable conditions by reason of fraudulent entry due failure to disclose a pre-existent back injury. On 27 October 2008, Petitioner was so discharged and assigned an RE-4 reenlistment code.

e. On 15 April 2010, the Naval Discharge Review Board, enclosure (4), upgraded Petitioner's characterization of service to Honorable and change the narrative reason for separation to Secretary Authority based on evidence that Petitioner was erroneously separated due to improper documentation. NDRB determined that Petitioner's enlistment was not fraudulent because he did disclose his back injury, and that his characterization of service was not under honorable conditions because he served without disciplinary incident. NDRB did not consider review of Petitioner's reenlistment code.

f. Reference (b) authorizes the issuance of an RE-4 reenlistment code to Sailors who have served without disciplinary incident but are not recommended for retention. In this regard, the assignment of an RE-4 reenlistment code under these circumstances means that a Sailor is not eligible for reentry into the Navy. However, reference (b) also authorizes an RE-1 reenlistment code for a Sailor, such as Petitioner, who would have been retained (recommended for retention) if not for the misinterpretation of medical reports.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board initially notes the corrective action by NDRB.

The Board also notes that Petitioner served satisfactorily and without disciplinary infractions, and that an RE-1 reenlistment code is now authorized by regulatory guidance for a Sailor who when separated is recommended for retention. Accordingly, the Board concludes that an RE-1 is now the most appropriate reenlistment code for Petitioner's situation and that the record should be corrected to show that he was assigned such a code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was assigned an RE-1 reenlistment code on 27 October 2008 vice the RE-4 reenlistment code actually assigned on that date.

b. 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.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purposes, with no cross references being made a part of Petitioner's naval record.

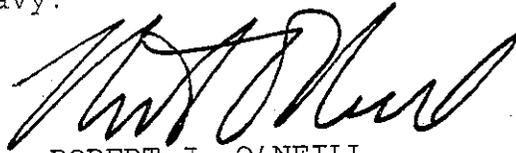
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c), it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

  
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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.



ROBERT J. O'NEILL  
Executive Director