



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

CRS
Docket No: 2459-01
10 December 2001

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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

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

2. The Board, consisting of Messrs. Milner, Shy, and Harrison, reviewed Petitioner's allegations of error and injustice on 15 November 2001 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 14 August 2000 at age 18.

d. On 15 August 2001 Petitioner submitted to an accession urinalysis that tested positive for marijuana. On 23 August 2000 the commanding officer directed his separation. Subsequently, on 31 August 2000 he received an entry level separation by reason of erroneous enlistment due to drug abuse. At that time Petitioner was assigned a reenlistment code of RE-4.

e. Petitioner admits that he used marijuana prior to his

departure for recruit training, but also states that he told his recruiter and requested that his departure be delayed. According to Petitioner, the recruiter gave him a drug test that tested positive for marijuana. The recruiter then filled out a Pre-Accession Drug Screening Acknowledgement And Consent Form, which he believed would prevent any drug-related problems for Petitioner at recruit training. Petitioner has submitted a copy of this partially filled out form with his application.

f. An advisory opinion from the Navy Personnel Command states that if the Board believes Petitioner, then his departure for recruit training should have been delayed for 45 days.

g. Applicable directives require the assignment of an RE-4 reenlistment code if an individual is separated for drug abuse. An RE-1 reenlistment code means that an individual is fully eligible for reenlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board concludes that Petitioner is telling the truth. Accordingly, his scheduled departure for recruit training should have been delayed for 45 days. Therefore, the assignment of an RE-4, although arguably proper, appears to the Board to be unfair. Accordingly, the Board believes that Petitioner's reenlistment code should be changed to RE-1.

The Board further concludes that this decisional document should be filed in Petitioner's record in order that reviewers may fully understand the reason for the change in his reenlistment code.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was assigned an RE-1 reenlistment code instead of the RE-4 reenlistment code actually assigned.

b. 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



ALAN E. GOLDSMITH
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