



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

CRS
Docket No: 2764-01
15 January 2002

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. Ivins, Hogue, and McBride, reviewed Petitioner's allegations of error and injustice on 9 January 2002 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 27 August 1998. On 25 September 1998 he was diagnosed as being alcohol and drug dependent.

d. On 30 September 1998 the commanding officer directed a void enlistment by reason of erroneous enlistment due to drug abuse. Petitioner was separated on 5 October 1998. At that time he was assigned an RE-4 reenlistment code.

e. Title 10 U.S.C. 978 states that an enlistment may be voided only if an individual is diagnosed as drug or alcohol dependent

within 72 hours of reporting to active duty. However, even if this time limit is not met, an individual so diagnosed may be separated with an entry level separation by reason of erroneous enlistment due to drug abuse. Additionally, regulations require the assignment of an RE-4 reenlistment code when an enlistment is voided or if an individual is separated by reason of erroneous enlistment due to drug abuse.

f. In his application, Petitioner states that he lied about his drug abuse and alcohol dependence in order to be separated from the Navy because he was homesick.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard it is clear that Petitioner was not diagnosed as drug and alcohol dependent within 72 hours of his entry on to active duty. Therefore, the Board concludes that the record should be corrected wherever necessary to show that he was separated with an entry level separation.

Concerning the RE-4 reenlistment code, the Board notes that an RE-4 reenlistment code is required when an individual receives an entry level separation resulting from an erroneous enlistment due to drug use. Further, even if Petitioner's current version of events is correct, it is well settled in the law that an individual who commits a fraud in order to be discharged should not be able to benefit from that fraud when it is discovered. Therefore, the Board concludes that the RE-4 reenlistment code is correct and should not be changed.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received an entry level separation on 5 October 1998 vice the void enlistment now of record.

b. That Petitioner's request for a change in the reenlistment code be denied.

c. 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.

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

d. That no further relief be granted.


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