



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

JRE
Docket No: 2983-01
14 August 2001

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Capt K.C. O'Neil ltr 2983-01, 3 Aug 01
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected to show that she was assigned a reenlistment code which will permit her to reenlist without having to obtain a waiver of disqualifying discharge.

2. The Board, consisting of Messrs. Bishop, Morgan and Shy, reviewed Petitioner's allegations of error and injustice on 9 August 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. In correspondence attached as enclosure (2), the Specialty Leader for Pulmonary Medicine advised the Board, in effect, that the record does not conclusively establish whether or not Petitioner has asthma. In his opinion, the available information does not adequately support the diagnosis of asthma, and there is another explanation for the abnormal test results she had while in the Navy. He recommended that her request be granted.

CONCLUSION:

The Board notes that Petitioner bears the burden of proving that she did not suffer from asthma during her enlistment, and that her reenlistment code is therefore erroneous. It concludes that the available evidence concerning the nature of the respiratory condition which resulted in her discharge is equivocal; however, in view of the contents of enclosure (2), the Board concludes that it would be in the interest of justice to resolve doubt in Petitioner's favor. Accordingly, it finds the existence of an injustice warranting the following corrective action.

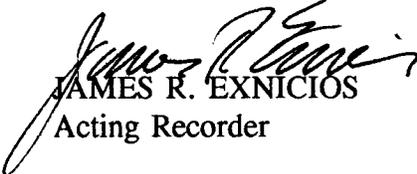
RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that, as an exception to policy, she was assigned a reenlistment code of RE-1 when discharged from the Navy on 14 March 2000.

b. That a copy of this Report of Proceedings be filed in 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.

ROBERT D. ZSALMAN
Recorder


JAMES R. EXNICIOS
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
By direction