



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

CRS
Docket No: 3199-01
20 September 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
(b) DOD Instruction 1332.28

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 naval record be corrected to show that he was transferred to the Fleet Reserve under the Temporary Early Retirement Authority (TERA) vice being discharged on 22 January 2001.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Kastner, reviewed Petitioner's allegations of error and injustice on 6 September 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 reenlisted in the Navy on 30 April 1993 for six years as an AT2 (E-5) with more than nine years of prior active service.

d. His record reflects that on 29 June 1994 he received nonjudicial punishment for failing to report an offense, larceny of government tools, and soliciting another to commit an offense. However, he was advanced in rate to AT1 (E-6) about 18 months

later.

e. On 12 September 1997 a medical evaluation board found Petitioner unfit for active duty due to coronary artery disease, coronary bypass, anteroseptal myocardial infarction, and hyperlipidemia. While the physical evaluation board is not part of the record, Petitioner was honorably separated on 29 May 1998 and transferred to the Temporary Disability Retired List (TDRL). At that time he had completed 14 years, 3 months and 28 days of active service.

f. On 31 July 2000 a medical reevaluation found Petitioner fit for duty and stated that he was eligible for reenlistment.

g. On 5 October 2000 the Bureau of Medicine and Surgery (BUMED) refused to grant Petitioner's request for waiver of physical standards due to his hearing loss, history of coronary heart disease with surgery, and recurring back pains. Therefore, because he was unable to reenlist, on 22 January 2001 Petitioner was honorably discharged by reason of expiration of term of service.

h. When contacted about the denial of Petitioner's request by a member of the Board's staff, a representative of BUMED admitted that such action was erroneous because Petitioner's original enlistment physical shows that he entered the service with a hearing loss and recurring back pains. The BUMED representative then stated that Petitioner should have been reenlisted.

i. DOD Directive 6130.3 states that individuals found fit for duty while on the TDRL should be permitted to reenlist.

j. Reference (b), at Part 7, paragraph B1a states, in part, as follows:

....(servicemembers) shall be afforded the opportunity to elect separation for physical disability or to apply for, and if approved, nondisability retirement under the Temporary Early Retirement Authority (TERA) Further, the same opportunity shall be afforded to members recommended for placement on or separation from the TDRL.

Although Petitioner was not recommended for separation from the TDRL, the ultimate result was the same since he was ultimately not allowed to reenlist.

k. In his application, Petitioner requested reinstatement on active duty. However, after speaking with a member of the Board's staff, he orally stated that he now desires transfer to the Fleet Reserve in accordance with TERA.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board believes that Petitioner should have been reenlisted upon separation from the TDRL as allowed by regulations then in effect. Since there was government error in this case, the Board also believes that the record should be corrected to show that he continued to serve until he reached 15 years of active duty service and, upon reaching 15 years of service, he was transferred to the Fleet Reserve under TERA.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 22 January 2001 but reenlisted upon being found fit for duty on 31 July 2000.

b. That the record be further corrected to show that he served until he was eligible for 15 year retirement (TERA) and that he was transferred to the Fleet Reserve under TERA on the date he first became eligible for such transfer.

c. That this Report of Proceedings be filed in Petitioner's naval record.

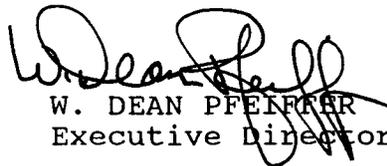
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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