



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

CRS
Docket No: 3924-01
26 October 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 naval record be corrected by changing the reenlistment code assigned on 15 March 1993.

2. The Board, consisting of Mr. Brezna, Mr. Mackey, and Ms. Schnittman, reviewed Petitioner's allegations of error and injustice on 24 October 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. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Naval Reserve on 20 November 1992. He later enlisted in the Navy on 4 March 1993 at age 21.

d. On 4 March 1993 Petitioner submitted to an accession urinalysis that tested positive for methamphetamines. On 8 March 1993 a dependence screening found no dependence for drugs but preservice use of alcohol and drugs. On 15 March 1993 Petitioner received a void enlistment by reason of "void enlistment - lack of jurisdiction." At that time he received a reenlistment code

of RE-4.

e. Petitioner argues that his positive drug test results were as a civilian. However, the record is clear that prior to the testing he was a member of the Naval Reserve and the testing occurred on the same day he enlisted in the Navy.

f. Title 10 U.S.C. 978 states, in part, that the enlistment of a person who is determined to be dependent on drugs or alcohol at the time of such enlistment, or within 72 hours, shall be void. Even though Petitioner was found not to be dependent he was still separated with a void enlistment.

g. Sailors separated within the first 180 days of active duty normally receive an entry level separation.

h. An individual separated in recruit training due to a positive accession urinalysis is separated by reason of erroneous enlistment due to drug abuse. An RE-4 reenlistment code must be assigned to an individual so separated.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board concludes that his void enlistment should be changed to an entry level separation by reason of erroneous enlistment due to drug abuse with an RE-4 reenlistment code. This conclusion is based on the fact that there was no determination of drug dependence. Therefore, a void enlistment was inappropriate and Petitioner should have received an entry level separation. Additionally, it is clear to the Board that the reason for separation should be changed to erroneous enlistment due to drug abuse. An RE-4 reenlistment code is appropriate in Petitioner's case since he was separated by reason of erroneous enlistment due to drug abuse.

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 issued an entry level separation by reason of erroneous enlistment due to drug abuse on 15 March 1993, vice the void enlistment now of record.

b. That no further relief be granted.

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.

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