



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

TRG
Docket No: 4732-01
10 October 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy filed an application with this Board requesting that his record be corrected to show changes in the reason for discharge and reenlistment code.

2. The Board, consisting of Mr. Harrison, Mr. Rothlein and Mr. Geisler, reviewed Petitioner's allegations of error and injustice on 25 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 15 July 1991. HE served continuously on active duty and, for the most part, in an excellent manner, until his discharge on 12 October 1999. During his service he was advanced to HT1 (E-6) and qualified as a combatant swimmer (SEAL) and was designated a master naval parachutist.

d. In the final performance evaluation, for the period 1 July 1999 to 12 October 1999, Petitioner was assigned an adverse mark of 1.0 in the category of military bearing/character, and

was not recommended for promotion or retention in the Navy. The evaluation comments state, in part, as follows:

During this reporting period, (his) military bearing and conduct have fallen far below that expected of a First Class Petty Officer. Although knowledgeable and skilled in Naval Special Warfare, he has required excessive counseling and supervision to accomplish his assigned duties and responsibilities. ... His failure to follow both verbal and written directives, and his involvement with civil authorities have been a discredit to the U. S. Naval Service.

e. The DD Form 214 shows that on 12 October 1999 Petitioner was honorably discharged by reason of unsatisfactory performance and was assigned an RE-4 reenlistment code. At that time he had completed 8 years, 2 months and 28 days of active service.

f. In his application, Petitioner states that near the end of his active service, he discovered that his wife was having an affair and he tried everything in his power to prevent the breakup of his marriage. He states that he caught his wife in a compromising situation and assaulted and severely injured the man she was with. The command decided not to press charges because civil charges were pending, and let him separate at the expiration of his enlistment. He states that he has straightened out his problems with civil authorities and has been able to save his family. Several Naval Special Warfare representatives have contacted him about reenlisting in the Navy because of the shortage of individuals trained in Special Warfare.

g. Attached to enclosure (2) is a letter to the Board, dated 1 June 2001, from the Commanding Officer (CO), SEAL Team Three that states, in part, as follows:

1. This letter is submitted in support of (Petitioner's) BCNR request to change his DD Form 214 RE-4 Re-entry Code to allow for re-enlistment. As (his) reporting senior at the time of his discharge, I am thoroughly familiar with the events at the time. A brief summary follows: He reported to the Naval Special Warfare Center in July of 1999 for duty as a Special Warfare instructor. Shortly thereafter, the command received a call from (his) mother-in-law who indicated that he was in some way a menace to his wife. As a result, a Military Protective Order (MPO) was issued by the Commanding Officer that prohibited (him) from contacting his wife for 10 days. He violated the

MPO, and in the process found his wife in a compromising situation with another man, whom he proceeded to beat up and threatened to kill. Shortly afterwards, he turned himself in to the police and was charged with several felonies. The victim dropped all charges but the state still convicted (him) of one felony, which has since been reduced to a misdemeanor assault. In the aftermath of this event, (his) EAOS came up. He was allowed to separate under honorable conditions, but with an RE-4 reenlistment code and an adverse evaluation which I signed.

2. Since that time, it appears that (he) has turned his life around considerably. He and his wife worked through their problems and are still together, he is an active member of a local church, he completed his court-assigned sentence and his legal record is clear (except for the misdemeanor from the original event). I interviewed him extensively and was impressed with the maturity gains he seems to have made in a short time. He expresses remorse for his actions and understands the requirement to comply with legal military orders such as the Military Protective Order the he violated in 1999. He displays enthusiasm for returning to the Naval Special Warfare community, to the point of being willing to work outside his SEAL NEC to prove himself. I support this appeal, with the following recommended stipulations: 2 years of fleet time prior to being allowed back into the Naval Special Warfare community. I have also discussed this with the Commanding Officer of the Naval Special Warfare Center at the time of the incident, who is also willing to support (his) appeal.

h. Attached to enclosure (2) is a memorandum, dated 24 September 2001, from the enlisted community manager for SEALs that states, in part, as follows:

... I recommend that (Petitioner's) request for removal of his RE-4 status be approved. If approved (he) must then seek to enlist as a Navy Veteran (NAVET) This will be contingent upon the needs of the HT community, which is currently manned at near 100% for HT1. Once on active duty he may submit a request for reinstatement of his 5326 NEC (SEAL/Combat Swimmer) Based on the most recent recommendation in his BCNR package, he should expect to serve in a non-NEC

5326 billet for at least 2 years before requesting reinstatement of NEC 5326.

i. The narrative reason for separation on Petitioner's DD Form 214 of "Unsatisfactory Performance" may be assigned only if an individual has a record of sustained unsatisfactory performance as reflected in performance evaluations and a counseling entry and is processed for administrative separation. In Petitioner's case, such processing would include the right to an administrative discharge board. However, both Petitioner and the CO of SEAL Team Three state that he was discharged at the expiration of his enlistment. The proper narrative reason for an individual so separated is "Completion of Required Active Service" with a Separation Program Designator (SPD) code of "JBK".

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Mr. Harrison and Mr. Rothlein, conclude that Petitioner's request warrants partial favorable action. In this regard, the majority believes that the narrative reason for separation now of record is clearly incorrect since Petitioner was not administratively processed for separation but was discharged upon the expiration of his enlistment. Accordingly, the majority concludes that the narrative reason should now be changed to "Completion of Required Active Service" with an SPD code of JBK.

Concerning the reenlistment code, the majority notes that the RE-4 reenlistment code was correctly assigned based on the circumstances leading to his separation, and the final adverse performance evaluation. The majority is aware that an RE-4 reenlistment code is normally a bar to further service in the Navy, but believes that Petitioner should submit a request to the Navy Recruiting Command (NRC) for a waiver of the code. In this regard, the majority notes that a waiver package with sufficient high level support might very well result in approval by NRC. However, since the RE-4 code was correctly assigned, the majority concludes that a change in that code is not warranted.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 12 October 1999 he was honorably discharge by reason of completion of required active service, SPD JBK, vice the narrative reason for discharge and SPD now of record.

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

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

MINORITY CONCLUSION:

Mr. Geisler agrees with the majority that the narrative reason for discharge should be changed to completion of required active service with an SPD of JBK. However, he disagrees with the majority on the reenlistment code issue. In this regard, he notes Petitioner's desire to serve, the current need for individuals with his training, and the support he has received from the Special Warfare community. He concludes that the best way to resolve this issue is to change the reenlistment code. Therefore, he concludes that the RE-4 code should now be changed to RE-1. This code will allow reenlistment if he is otherwise qualified and there is a need for his services.

The minority also concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in the reason for discharge and reenlistment code.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 12 October 1999 he was honorably discharge by reason of completion of required active service, SPD JBK, with an RE-1 reenlistment code vice the narrative reason SPD and reenlistment code now of record.

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

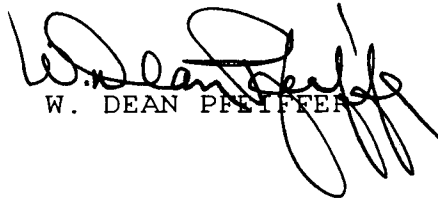
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

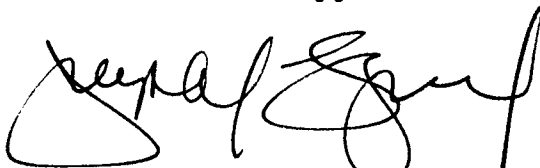


W. DEAN PFEIFFER

~~MAJORITY REPORT:~~
~~Reviewed and approved:~~

MINORITY REPORT:
Reviewed and approved:

DEC - 5 2001



JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)