



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

ELP
Docket No. 5037-01
14 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, applied to this Board requesting, in effect, that his reenlistment code be changed.
2. The Board, consisting of Messrs. Hogue, Ivins, 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. Although it appears that Petitioner's application to the Board was not filed in a 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 Navy on 15 December 1986 for four years at age 17. At the time of his enlistment, he had completed 12 years of formal education and attained test scores

which placed him in Mental Group IV. The record reflects that Petitioner is a native of Puerto Rico.

d. A recruit evaluation report prepared on 23 January 1987 states that Petitioner was enrolled in academic remedial training (ART) on 21 December 1986. After twice failing the Gates-MacGinitis Test and scoring low on another test, it was determined that he should attend the verbal skills portion of ART. While in the verbal skills portion, Petitioner failed all three phases of the program. The division officer stated that Petitioner needed to learn English and ART was not designed to help those with severe language deficiencies. It was recommended that Petitioner be academically discharged due to his English language deficiency.

e. On 29 January 1987 Petitioner was notified that administrative separation was being considered by reason of entry level performance and conduct as evidenced by repeated academic failure. He was advised of his procedural rights and waived those rights. He did not object to the discharge.

f. On 6 February 1987 the discharge authority directed an uncharacterized entry level separation by reason of entry level performance and conduct due to repeated academic failure. Petitioner was so discharged on 12 February 1987 and assigned an RE-4 reenlistment code.

g. Regulations require the assignment of an RE-4 reenlistment code to individuals separated by reason of entry level performance and conduct. An RE-3E reenlistment code is authorized for individuals separated by reason of erroneous enlistment. An individual may be separated for this reason if the disqualifying factor would have prevented enlistment had it been known at that time.

h. In his application, Petitioner contends that he has now completed two years of college, and has become more proficient in English.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Petitioner's youth and immaturity, his low test scores, and that he was not a discipline problem during his short period of service. The

Board notes that Petitioner is of Puerto Rican descent and believes that his language deficiency should have been readily apparent at the time of his enlistment, and that he never should have been enlisted in the first place. The Board believes that assignment of the most restrictive RE-4 reenlistment code is unjust since the disqualifying factor in this case, the English deficiency, does not reflect on his good character and can be, and apparently has been, overcome. The Board thus concludes that Petitioner should not be denied the opportunity of further service if he no longer has a language deficiency, and it would be appropriate and just to change the reason for discharge and reenlistment code to erroneous entry and RE-3E.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he received an uncharacterized entry level separation on 12 February 1987 by reason of "erroneous entry (other)" with an RE-3E reenlistment code vice "entry level performance and conduct" and the RE-4 reenlistment code now of record.

b. That a copy of the Report of Proceedings be file in Petitioner's naval record.

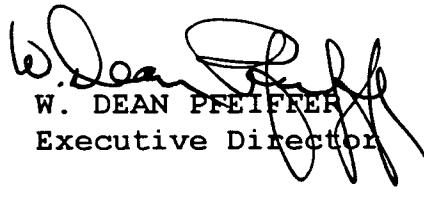
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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