



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

TRG
Docket No: 5528-01
2 August 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) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that his record be corrected to show that he was released from active duty on 3 January 1995 vice being released on 21 December 1994.

2. The Board, consisting of Mr. Taylor, Mr. Novello and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 31 July 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 Petitioner's application 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 Naval Reserve on 7 May 1992 and reported for two years of active duty on 4 January 1993. He was released from active duty on 21 December 1994 with his service characterized as honorable. The narrative reason for separation was "Insufficient retainability (economic reasons)" and the Separation Program Designator (SPD) is "MBM" which indicates the separation was voluntary. At the time of separation he had completed 1 year, 11 months and 18 days of active service. The DD Form 214 in the record shows that he was

paid for 39.5 days of unused leave. He has since reenlisted and continues to be a member of the Naval Reserve.

d. Petitioner states in his application that he was released prior to completion of two years because Naval Station Treasure Island was closing and since he did not have enough obligated service remaining on his enlistment it was not cost effective to transfer him to another duty station. He states that he has been denied outpatient health care by the Department of Veterans Affairs because he has not completed two years of active duty.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. If the command and Petitioner had been aware of the problem he could have been placed on leave and separated from active duty on 3 January 1995 at the completion of his two year obligation. Therefore, the Board believes that the record should be corrected to establish his eligibility for veterans' benefits. This can be accomplished by showing that he was not separated on 21 December 1994 but began a period of annual leave on 22 December 1994 and he remained on leave until his release from active duty on 3 January 1995. This action will reduce his leave balance by 12 days and entitle him to an additional 12 days of pay and allowances.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not released from active duty on 21 December 1994 but began a period of leave on 22 December 1994 and was then released from active duty on 3 January 1995.

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. 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