



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

TRG
Docket No: 6770-00
18 July 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 United States Navy filed enclosure (1) with this Board requesting that his record be corrected to show to show that he was not discharged on 21 February 1997 but continued to serve on active duty.

2. The Board, consisting of Mr. Brezna, Mr. Dunn and Mr. Mackay, reviewed Petitioner's allegations of error and injustice on 10 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 reenlisted in the Navy on 29 July 1994 for three years. Subsequently, he was advanced to BU2 (E-5). On 13 February 1997 he was notified of separation processing by reason of weight control failure. In connection with this processing, he elected to waive his right to have his case heard by an administrative discharge board. After review, the discharge authority directed an honorable discharge by reason of weight control failure. He was so discharged on 21 February 1997 and was paid separation pay in the amount of 8,672.34. At that time, he was not recommended for reenlistment and was assigned an RE-4

reenlistment code.

d. Attached to enclosure (1) are advisory opinions from the Navy Personnel Command which state that Petitioner failed to meet body composition assessment standards on five occasions. However, on the first two occasions he was not formally counseled as required concerning the administrative consequences of his failure to meet standards and, therefore, those two assessments should not be considered as failures. The third assessment was conducted by a physician and not the command fitness coordinator and, therefore, this assessment should not count as a failure. The fourth body composition assessment was invalid because it was not conducted at least 48 hours prior to the physical readiness test. The fifth assessment was considered valid. The advisory opinions conclude that since there is only one valid body composition assessment, Petitioner does not meet the requirement for three failures in a four year period and, therefore, he was discharged in error.

e. The Board is aware that when a discharge is found to be in error, an individual is only entitled to service until the expiration of the enlistment on which he was serving at the time of discharge. In this case, Petitioner's three year enlistment would have expired on 28 July 1997.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner actually failed the body fat composition standards but these failures cannot be counted as such for technical reasons. However, given the circumstances, the Board agrees with the advisory opinions that Petitioner should not have been discharged due to weight control failure on 21 February 1997. Therefore, the record should be corrected to show that he was not discharged on 21 February 1997 but continued to serve on active duty until the expiration of his enlistment on 28 July 1997. His discharge on that date should be considered to be involuntary to prevent recoupmnt of the separation pay he already has received.

Concerning the reenlistment code to be assigned, the Board concludes that since the body composition assessments cannot be used for discharge processing, they cannot be used in the assignment of the RE-4 reenlistment code. Accordingly, the reenlistment code assigned on 28 July 1997 should be RE-1. However, Petitioner will have to meet weight standards before reenlistment will be authorized.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 21 February 1997 but continued to serve until he was honorably discharged on 28 July 1997 at the expiration of his enlistment with an RE-1 reenlistment code. This discharge should be considered involuntary for the purposes of payment of separation pay.

b. 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.

c. 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.

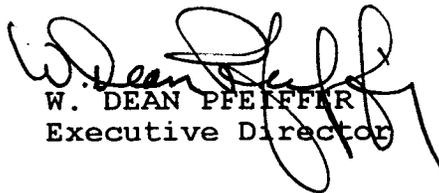
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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