



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

TRG

Docket No: 7368-01

6 June 2002

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

(b) SECNAVINST 7220.38E

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 reinstatement on active duty or a change in the reenlistment code. He is also requesting that recoupment of his enlistment bonus be waived.

2. The Board, consisting of Mr. Hogue, Mr. Milner and Mr. Cooper, reviewed Petitioner's allegations of error and injustice on 29 May 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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Army on 18 August 1998 and received an entry level separation on 6 October 1998. He was granted a waiver and enlisted in the Navy on 19 July 1999 at age 19. At that time, he was paid an enlistment bonus of \$2,000. He

completed initial training, and on 27 October 1999, reported to his first duty station. Subsequently, he was an unauthorized absentee for about nine days and was referred for a psychiatric evaluation. The psychiatric evaluation dated 22 February 2000 included several mental ability and psychiatric tests. The "Personality (or Symptom or Mood) Assessment" portion of the evaluation states, in part, as follows:

The self-scoring MMPI-2 showed numerous evaluations. Validity scales are indicative of a possible attempt to present himself in a favorable light. . . . They also reflect an inflexible style and possible deviant beliefs or neurotic tendencies. Deteriorated defenses are likely with a poor self-concept. Clinical scales are indicative of acute stress with depression in prominence. He is likely to be moody, angry, distrustful and quite resentful of others. He tends to decompensate under stress and may exhibit behavioral problems. Possible underlying personality problems are a likely source of his clinical picture. These result in a very poor achievement and work problems. His history of acting out-behavior is also likely to be related to these personality features. There are indications of a preoccupation with feeling guilty and unworthy that reflect low self-esteem and feelings of inadequacy. Interpersonally, he may appear to be overly sensitive and resistant to the demands of others. This may make him appear to be argumentative and obnoxious. He may also appear to be aloof but may show dependency on others and an exaggerated need for affection. He is introverted and may have difficulty interacting with people. . . . He is rebellious, resentful and non-conforming. A limited frustration tolerance and dissatisfaction with current social adjustment is likely. There is a likely history of conflicts with society. Clinical levels of depression are noted with a tendency to worry over even minor issues. He is indecisive and uses rationalization and intellectualization excessively. He may appear to others as being unusual or unconventional. His history reflects such an avant garde lifestyle with his interest in music and tattoos. . . .

The evaluation conclusion states that Petitioner is far below average for immediate and delayed memory for stories and delayed memory for visual material. Based on this evaluation Petitioner was diagnosed with a mild neurocognitive disorder with a moderate

to severe degree of impairment for military duty and an adjustment disorder. Additionally, Petitioner was provisionally diagnosed with a personality disorder.

d. On 30 March 2000 Petitioner was notified of separation processing due to the diagnosed personality disorder. In connection with this processing, he elected to waive his procedural rights. After review, the discharge authority directed a general discharge. However, on 7 April 2000 he was issued an honorable discharge by reason of personality disorder. At that time, he was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

e. Petitioner is contending, in effect, that he was improperly discharged because he does not have a personality disorder. In support of this request, he has submitted a psychiatric evaluation from the Department of Veterans Affairs (DVA) regarding the likelihood that his neurocognitive and psychiatric disability was incurred or aggravated by military service. The DVA psychiatrist states, in part, as follows:

. . . . It appears from reading (the preceding evaluation) . . . that many bits of information have been taken out of context, and if not, misconstrued in follow up studies. A brief review shows that this patient had significant psychological trauma as a child. He was severely physically abused by his paternal grandmother, with whom he lived. In addition to this, his mother was constantly in and out of his life due to psychiatric instabilities. He was taunted and teased through school, and at age 15 suffered a head injury with unconsciousness, after a fight with another peer. . . . the NMPI reflected certain characteristics by (the military doctor) to view a personality disorder . . . should be ruled out. (However,) it appears that his has been taken out of context and this gentleman has been formally diagnosed with (a) personality disorder . . . instead of the original intention . . . which was to further evaluate this gentleman and rule this out. I strongly disagree with the statement . . . that "his history reflects such an avant-garde lifestyle, his interest in music and tattoos". It should be noted that this is rather dated information, perhaps 40 years ago, in the 1960s or even 70s, this type of lifestyle would have been considered extreme; however, in today's culture, music

and tattoos are very much the mainstream. I feel (the military doctor) presented him as a more deviant gentleman than what he actually is.

. . . . (The military doctor) also recommended that this gentleman have full neuropsychiatric testing redone in one year, which would be February 2001. This has not yet been completed. He currently is denying all symptomatology of mood disorders, anxiety disorders, and psychosis. When one further reads the previous psychological testing, the auditory hallucinations that he allegedly has, . . . it was more the suspicion of the examiner that he was having these, than the patient admitting to having these. The de-ja-vu experiences are simply that. They are brief occurrences, maybe one or so a year, which the gentleman feels he has previously experienced . . . This is not an unusual phenomenon and certainly does not deem this gentleman psychotic.

The DVA doctor found an adjustment disorder by history and deferred a diagnosis on Axis II, the axis on which a diagnosis of personality disorder would be made. Copies of all the psychiatric evaluations are attached to enclosure (1).

f. Petitioner has submitted documentation showing that he is indebted to the Navy in the amount of \$1,551.68 and the Defense Finance and Account requesting payments of \$100 per month. Recoupment of an enlistment bonus is required when a member voluntarily or because of misconduct does not complete the term of enlistment. Included under this requirement are administrative discharges by reason of personality disorder. However, recoupment is not required when a member is medically discharged with a physical disability.

g. Reference (b) sets forth the criteria for remission or waiver of indebtedness, or erroneous payments made to or on behalf of members and former members of the Naval service. This instruction implements title 10 U. S. C. 6161 and 10 U. S. C. 2774. Waiver action based on 10 U. S. C. 2774 is precluded in this case since the payment was legal and proper when paid. However, under the provisions of 10 U. S. C. 6161 a remission of the indebtedness of an active duty enlisted member is authorized if the request for remission is approved by the Secretary of the Navy or a designee prior to the individual's honorable discharge.

h. The criteria for requesting such a remission of

indebtedness are set forth in reference (b). That reference states that an investigation must be conducted into the facts and circumstances surrounding the request for remission. The reference also directs that active duty members be advised of their right to request remission immediately upon discovery of an overpayment. There is no indication in the record that Petitioner was ever advised as required.

i. Regulations allow for an individual's discharge by reason of best interest of the service or Secretarial authority when discharge is warranted and no other reason is appropriate.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. The Board weighed the extensive evaluation completed while Petitioner was in the Navy against the DVA evaluation which was apparently based only on an interview with Petitioner. The Navy evaluation resulted in a provisional diagnosis of a personality disorder, and not a firm or final diagnosis. The latter evaluation declined to diagnose such a disorder. However, after reviewing the Navy's evaluation, the Board concludes that even if Petitioner did not have a personality disorder, his problems were sufficiently severe to warrant discharge. Therefore, the Board believes that separation was warranted, but the reason for discharge should be changed. Since no other reason fits the circumstances, the Board concludes that the discharge should be changed to Secretarial Authority. In addition the Board concludes that a record which includes a nine day period of unauthorized absence and the problems set forth in the psychiatric evaluation are sufficient to support the assignment of the RE-4 reenlistment code.

The Board notes that portion of the DVA evaluation concerning Petitioner's cognitive difficulties and the recommended change in the record to show that he was not discharged by reason of a diagnosed personality disorder. Given the circumstances of the case, the Board believes that Petitioner's discharge should not be considered voluntary or by reason of misconduct for the purposes of recoupment of the unearned enlistment bonus, and remission of the indebtedness is warranted.

Remission can be accomplished by showing that a request for remission of indebtedness was granted under the provisions of Title 10 U. S. C. 6161 and reference (b). Paragraph 7a. of reference (b) indicates that a decision on the request for

remission must be made prior to discharge. Therefore, the Board concludes that the record should show that Petitioner's request for remission of indebtedness due to the enlistment bonus was approved by the Secretary of the Navy on 7 April 2000. The amount approved for remission should be that portion of the unearned enlistment bonus due on the date of his discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 7 April 2000 he was honorably discharged by reason of Secretarial Authority vice the discharge by reason of personality disorder now of record.

b. That the naval record be further corrected to show that he requested remission of his indebtedness and that this request was favorably endorsed by his commanding officer. The amount recommended for remission is the amount due on the date of Petitioner's discharge.

c. That the naval record be further corrected to show that the request for remission was approved by the Secretary of the Navy on 7 April 2000, the date of Petitioner's discharge.

d. That this Report of Proceeding constitute the report of investigation or written report required by reference (b), and the Report of Proceedings be forwarded to the Defense Finance and Accounting Service for implementation under the provisions of the regulations.

e. That Petitioner's requests for reinstatement in the Navy and a change in the reenlistment code be denied.

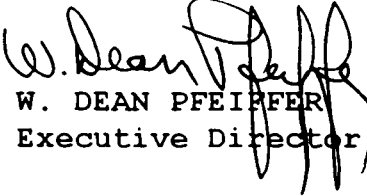
f. That this Report of Proceedings be filed in Petitioner's naval record.

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