



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

TRG
Docket No: 4691-02
15 November 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

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

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member in the Navy, filed an application with this Board requesting, in effect, that her separation program designator (SPD) code be changed in order to establish eligibility for the Montgomery G.I. Bill (MGIB).

2. The Board, consisting of Mr. Milner, Mr. Dunne and Ms. Hare, reviewed Petitioner's allegations of error and injustice on 13 November 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 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 3 July 1995 at age 18 and elected to participate in the MGIB. The administrative discharge documentation is not filed in the record. However, the record shows that she was married to an active duty service member and her son was born on 6 September 1997. The DD Form 214 shows that she was honorably discharged on 5 December 1997 by reason of "Parenthood/custody of minor children" with an SPD code of "KDG". The KDG code indicates that her separation was voluntary. At the time of her discharge, she had completed two years, five months and three day of active service.

d. The Board is aware that Petitioner is not eligible for MGIB because she did not complete 30 months of active duty, and there is no provision in the law that would allow the refund of her \$1,200 MGIB payment. However, she would be eligible for payments under MGIB based on her 29 months of active service if her separation was involuntary. As previously noted, the SPD of KDG indicates that her separation was voluntary. Therefore, she is being denied all MGIB benefits. An SPD of JDG would indicate that her separation was involuntary, and she would be entitled to 29 months of MGIB benefits.

e. Petitioner contends that she did nothing wrong and is improperly being denied benefits to which she is entitled. The Board recognizes that as the mother of a young child she would have had difficulties in standing watches, performing shift work and deployments, and in this situation, she could not have signed a dependent care certificate and would have been involuntarily discharged.

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 if she had stayed on active duty another 27 days, she would have been entitled to MGIB benefits. Although she apparently requested discharge it appears that as a mother of a young child she really did not have many options. If she had not requested discharge, it is very likely that she could not have signed a dependent care certificate and would have been processed for an involuntary discharge. Given the circumstances, including her good record of service and the fact that she was within 27 days of qualifying for MGIB, the Board concludes that Petitioner's SPD should be changed to JDG so that she can receive 29 months of benefits.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand her MGIB entitlement.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 5 December 1997 she was assigned a Separation Program Designator (SPD) of JDG vice the SPD of KDG 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

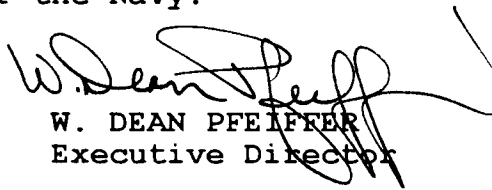
review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

ALAN E. GOLDSMITH
Acting Recorder

5. 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