



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

TJR
Docket No: 5064-01
26 February 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
(b) SECNAVINST 1910.4B
(c) BUPERSINST 1900.8

Encl: (1) DD Form 149 with 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, filed enclosure (1) with this Board requesting that changes in the characterization of his service and his reenlistment code.

2. The Board, consisting of Mr. Cooper, Mr. Milner, and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 20 February 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 15 March 1999 at the age of 17. Subsequently, he completed recruit training and reported for advanced training.

d. On 3 August 1999 Petitioner received nonjudicial punishment (NJP) for four periods of unauthorized absence (UA) totalling 28 days and three specifications of failure to obey a lawful order, specifically, smoking in his barracks room, leaving

the barracks after liberty was secured, and improperly wearing civilian clothes. The punishment imposed was a \$958 forfeiture of pay, restriction and extra duty for 45 days, and reduction to paygrade E-1.

e. Subsequently, Petitioner was notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. Petitioner waived his rights to consult with legal counsel, submit a statement concerning the proposed separation, and to present his case to an administrative discharge board.

f. On 6 August 1999 the commanding officer recommended Petitioner's discharge under other than honorable conditions by reason of misconduct and, on 9 August 1999, the discharge authority approved this recommendation. On 20 August 1999 Petitioner was discharged under other than honorable conditions by reason of misconduct, and was assigned an RE-4 reenlistment code.

g. Along with his application Petitioner has submitted statements from a number of individuals who state that he was extremely immature when he entered the Navy.

h. Petitioner served on active duty for four months and nine days. Reference (b) requires the issuance of an uncharacterized entry level separation if separation action was initiated within 180 days of continuous active service, and the individuals service is not characterized as under other than honorable conditions.

i. Reference (c) mandates the assignment of an RE-4 reenlistment code to an individual separated by reason of misconduct. Such a code is also required for an individual separated within the first 180 days of active service by reason of entry level performance and conduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The Board initially notes Petitioner's disciplinary infractions and does not condone his misconduct. However, the Board is also aware that although frequent his offenses were relatively minor.

The Board also notes that Petitioner was only 17 years old and obviously was immature. He was discharged under other than honorable conditions, but reference(b) authorized an uncharacterized entry level separation. The Board believes that the former characterization, although technically proper, was inappropriate given Petitioner's youth and immaturity and the nature of his offenses.

The Board also concludes that the assigned RE-4 reenlistment code is proper and appropriate because such a code is authorized by reference (c) for individuals who are discharged by reason of misconduct. In this regard, the Board notes that this code would have been assigned even if Petitioner had been discharged by reason of entry level performance and conduct,

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an uncharacterized entry level separation on 20 August 1999 vice the other than honorable discharge on that date.

b. That no further relief be granted.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

d. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 27 June 2001.

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.

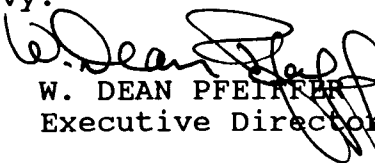
ROBERT D. ZSALMAN
Recorder



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 Regulation, 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