



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

ELP
Docket No. 6078-01
7 January 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

Encl: (1) DD Form 149 w/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, applied to this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Messrs. Kastner and Rothlein, and Ms. Schnittman reviewed Petitioner's allegations of error and injustice on 3 January 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 to the Board 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 2 November 1988 for four years. The record reflects that he was advanced to DCFN (E-3) and served without any disciplinary infractions until 22 June 1990, when he received nonjudicial punishment (NJP) for dereliction of duty.

d. Petitioner then served without further incident and was advanced to DC3 (E-4) in September 1991. A page 13 entry, erroneously dated 26 October 1991, rather than 26 October 1992 states Petitioner was not recommended for reenlistment due to a lack of motivation. On 30 October 1992, a second page 13 entry states Petitioner was not recommended for retention by the commanding officer. On the same date, Petitioner was honorably released from active duty, transferred to the Naval Reserve, and assigned an RE-4 reenlistment code. At the time of his release from active duty, his conduct and overall trait averages were 3.44 and 3.5, respectively. Petitioner was honorably discharged upon completion of his obligated service on 26 August 1996.

e. Regulations require the assignment of an RE-4 reenlistment code to individuals not recommended for retention by the commanding officer.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that Petitioner had only a single NJP for a relatively minor offense in four years of active service and was subsequently advanced to DC3 (E-3). The Board further notes that the record is devoid of any counseling entries documenting any deficiencies in Petitioner's performance or motivation. Further, his enlisted performance record (page 9) shows he had average performance during his enlistment. The Board believes that a vague explanation that reenlistment was not recommended by the commanding officer due to a "lack of motivation" provides an insufficient basis to justify the assignment of an RE-4 reenlistment code. Accordingly, absent convincing evidence to the contrary, the Board believes that assignment of an RE-4 reenlistment code was unjust. Therefore, the Board concludes that it would be appropriate and just to change the reenlistment code to RE-1 and all references that he was not recommended for retention be removed from the record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the RE-4 reenlistment code, assigned on 30 October 1992, to RE-1.

b. That all references that Petitioner was not recommended for reenlistment be removed from the record.

c. 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.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references 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