



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

TRG
Docket No: 8262-01
2 January 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 of the Naval Reserve filed an application with this Board requesting that his record be corrected to show an honorable discharge and an RE-1 reenlistment code.

2. The Board, consisting of Mr. Pfeiffer, Mr. McPartlin and Mr. Whitener, reviewed Petitioner's allegations of error and injustice on 18 December 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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Naval Reserve on 22 November 1996 and, on 25 November 1996, he reported for four years of active duty in the Training and Administration of the Reserves (TAR) program. After he satisfactorily completed training, on 25 July 1997, he was advanced to SK3 (E-4). Subsequently, he was advanced to SK2 (E-5).

d. On 3 August 1998 Petitioner reported to Mobile Inshore Undersea Warfare Unit (MIUWU) 203. In the performance evaluation for the period 3 August 1998 to 15 March 1999 his individual trait average was 3.43 and he was recommended for advancement and retention in the Navy. The performance evaluation for the period 16 March 1999 to 15 March 2000 he was marked as "progressing" towards advancement and was not recommended for retention in the

Navy.

e. The next performance evaluation for the period 16 March 2000 to 24 November 2000 is not filed in the record but has been submitted by Petitioner. The evaluation is adverse and he was not recommended for advancement or retention. The evaluation comments state, in part, as follows:

... (He) has continued his downward spiral. His performance has been unsatisfactory during this period. His lack of respect for superior officers and superior petty officers has been noted on several occasions. His overall performance reflects that of an E-1 who has not received proper training rather than that of a Second Class Petty Officer. He refused Captain's Mast during April of this period on a variety of charges, and was subsequently sent TEMDU to the TPU in Groton, CT to await ADMIN DISCHARGE BOARD. The Board met on 17 November 2000 and awarded him a general discharge and did not recommend retention in the Navy.

The performance evaluation Petitioner received from the TEMDU command, for the period 24 April to 24 November 2000, is also not filed in the record, but is completely satisfactory and he was recommended for retention in the Navy. He was issued a general discharge on 25 November 2000 due to completion of required active service. At that time he was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

f. When an individual is released from active duty at the completion of required active service, he must receive an honorable characterization of service if his overall traits average, taken from all of his performance evaluation is 2.0 or higher. At the time of his separation, Petitioner met this requirement.

g. Petitioner filed a hotline complaint in May 2001 alleging that there were improprieties in the handling of his case and that reprisals were taken against him after he reported problems with the "EZ PASS system". Attached to enclosure (1) is the investigation conducted into this matter, which sets forth the facts and circumstances. The investigating officer (IO) concluded, in part, as follows:

... EZ PASS system suffered from a lack of supervisory control prior to being assigned to (Petitioner). Assigning this to a junior sailor, whose performance was questionable in the eyes of the Commanding Officer, would portend future and continued problems with the EZ PASS system - this turned out to be the case. At no

point, was the Supply Department chain of command involved in this process, either in a supervisory role or in the administration of this process. Having the officer relieved of the EZ pass system to be the primary investigator appears to be in conflict with getting an impartial look at the system and fixing the problem. (Petitioner) was never found guilty of any violation regarding the misuse or impropriety with the EZ PASS system.

Concerning the administrative discharge processing, the IO found, in part, as follows:

... This is the area where the gravest injustice was done. (Petitioner) was "offered" Captain's Mast for a seemingly minor offense, failure to report, that is normally corrected by counseling or in some other manner, especially if this is a first time offense (which it was) and the individual had been formally counseled ... (which [Petitioner] was not). When he refused Captain's Mast, (he) was sent TAD with "no cost" orders to NAVSUBASE Groton, CT. (The) Commander, Naval Region Northeast ruled on (Petitioner's) article 138 complaint that his assignment to Groton should have to be on a cost basis, ordering restitution to (him) for costs incurred while in Groton. (The commanding officer) attempted every avenue possible in pursuing a General Discharge for (Petitioner). Waiting six months after notifying a sailor that he will be going before an ADSEP Board is excessive and indicates that there is not enough evidence to find guilt. All indications are this was the case regarding (Petitioner). There were numerous problems with the conduct of the ADSEP Board, which are covered in the working papers. However, the single fact was the findings of the board, however flawed, were not upheld by Commander, Amphibious Group TWO and as a result could not be used as the basis for discharging (Petitioner) since the results were not upheld, there was no basis for a General Discharge.

Concerning command oversight and conduct, the IO found, in part, as follows:

.... After (Petitioner) refused Captain's Mast, he was sent from the MIUW at his own expense to NAVSUBASE, Groton. Then a lengthy process of finding the vehicle to discharge (him) There were several protected communications initiated by (Petitioner) during this period. (The commanding officer) said he felt that

these complaints were "smoke screens" on the part of (Petitioner) to deflect attention from his performance deficiencies. (The commanding officer's) involvement in the ADSEP board proceedings and subsequent discharge process is disturbing. A commanding officer cannot ignore the basic leadership tenets of taking care of his people, even when he is processing them for discharge.

The IO concluded that reprisals were taken against Petitioner after he made a protected communication. The IO recommended an honorable discharge and an RE-1 reenlistment code.

h. On 8 November 2001, the Commander, Amphibious Group TWO concurred with the findings of fact, conclusions and recommendation of the IO and recommended that this Board recharacterize Petitioner's service to honorable and change the reenlistment code to RE-1.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Petitioner was a very junior second class petty officer with less than four years of active duty and believes that he may have had difficulties in performing independent duty in an acceptable manner. However, the Board also notes the findings of the IO that reprisals were taken against him after he made protected communications. Therefore, the Board agrees with the recommendation made by the Commander, Amphibious Group TWO that the record should be corrected to show an honorable characterization of service and RE-1 reenlistment code. Clearly he should have received such a characterization given his satisfactory overall trait average.

Petitioner would have normally been released from active duty on 25 November 2000 vice being discharged since he still had a remaining military obligation. Therefore, Petitioner's record should be corrected to show that he was released from active duty on 25 November 2000 with his service characterized as honorable, vice the general discharge actually issued on that date. Although two adverse performance evaluations are normally sufficient to support the assignment of an RE-4 reenlistment code, the evaluation from the TEMDU command, in which he was recommended for retention, covers essentially the same period as the second adverse evaluation. Since the last adverse performance evaluation was based on actions that have been found to be improper, it should be removed from the record upon the request of Petitioner if it is filed in the future. Accordingly,

record should be further corrected to show that he was assigned an RE-1 reenlistment code vice the RE-4 reenlistment code now of record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was released from active duty on 25 November 2001 with his service characterized as honorable with an RE-1 reenlistment code vice the general discharge and RE-4 reenlistment code now of record.

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.

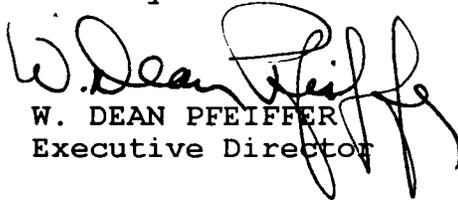
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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