



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

TRG

Docket No: 10977-02
31 July 2003

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 Marine Corps, filed an application with this Board requesting that her record be corrected to establish eligibility for Montgomery G. I. Bill (MGIB) benefits.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 July 2003 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 Marine Corps on 27 June 1994 at 17. On 30 May 1996, Petitioner was notified that she was pregnant, with an estimated delivery date of 29 December 1996. On 1 October 1996 she requested discharge because she was undeployable. This request was granted and she was honorably discharged on 29 November 1996 by reason of pregnancy or child birth with a Separation Program Designator (SPD) code of KDF1.

d. In order to be eligible for MGIB benefits, an individual must be discharged for the convenience of the government and complete 30 months of a four year active duty commitment. At the

time of her discharge, Petitioner had completed 2 years, 5 months and 2 days of active service. This left her 28 days short of MGIB eligibility. The DD Form 214 shows that she received payment for 23 days of unused leave.

e. Petitioner states that she was told that her early discharge would have no impact on her MGIB benefits. She points out that her son was born on 24 December 1996 and, if she had been properly advised, could have remained on active duty until after his birth to complete the 30 month service requirement.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner could have remained on active duty to complete 30 months of service, the Board concludes that a correction to her record to show 30 months of active duty is warranted.

Therefore, the record should be corrected to show that she was not discharged on 29 November 1996 but continued to serve on active duty. The record should then show that, on 5 December 1996, she began terminal leave and remained in that status until she was honorably discharged by reason of pregnancy/childbirth on 26 December 1996 with two years, six months of active duty. This means that any pay due as a result of this correction should be offset by the payment she received on 29 November 1996 for the 23 days of unused leave.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in the date of her discharge.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that she was not discharged on 29 November 1996 but continued to serve on active duty until 26 December 1996 upon the completion of 30 months of active duty.

b. That Petitioner's naval record be further corrected to show that she began terminal leave on 5 December 1996 and remained in that status until her discharge. Any pay due as a result of this correction should be offset with the payment for unused leave she has already received.

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

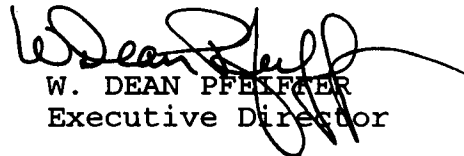
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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