



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

WMP
Docket No. 5254-02
12 December 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) Case Summary
(2) 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, changes in her separation code and eligibility for the Montgomery G.I. Bill (MGIB).

2. The Board, consisting of Messrs. Pfeiffer, Novello, and Dunne, reviewed Petitioner's allegations of error and injustice on 11 December 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 best interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 5 November 1991 for four years at age 19. She served without disciplinary incident until 30 April 1982, when she received nonjudicial punishment (NJP) for failure to obey a lawful order. The punishment imposed was forfeitures of \$392 per month for two months, 45 days of restriction and extra duty, and a reduction in rate. All punishment was suspended for six months except for one month of the forfeitures.

d. Petitioner's record reflects that she completed alcohol rehabilitation treatment in August 1992. She further served without incident until 2 December 1993, when she was convicted by civil authorities of driving under the influence (DUI) and failure to have insurance. She was fined \$733 and ordered to attend a drug and alcohol risk reduction program.

e. On 14 March 1994, Petitioner was notified that administrative separation action was being initiated by reason of misconduct due to commission of a serious offense, civil conviction, and alcohol rehabilitation failure. She was advised of her procedural rights and elected to retain her rights, including the right to an administrative discharge board (ADB).

f. On 9 May 1994, an ADB meet and found Petitioner had committed misconduct by reason of civil conviction, and was an alcohol rehabilitation failure. However, the ADB also found that she had not committed misconduct by commission of a serious offense, and further recommended separation with an honorable discharge.

g. On 2 June 1984, the commanding officer forwarded the separation action to the Chief of Naval Personnel (CNP) recommending an honorable discharge. On 14 July 1994, CNP directed an honorable discharge by reason of misconduct due to commission of a serious offense. Petitioner was so discharged on 22 July 1994. At that time, she had about two years and eight months of service.

h. Petitioner's DD Form 214 sets forth the narrative reason for separation as "misconduct" and her separation code as "GKQ", which means that she was separated by reason of misconduct due to commission of a serious offense. A code of "GKB" would have been assigned if Petitioner had been separated by reason of misconduct due to civil conviction.

i. Regulations presently state that a servicemember who enlisted for a four year active duty commitment must complete a minimum of three years of continuous active duty in order to be eligible for basic educational benefits under the Montgomery G.I. Bill (MGIB). An individual must receive a fully honorable characterization of service in order to receive benefits. Additionally, this provision of law also states that, "Any amount by which the basic pay of an individual is reduced shall be revert to the Treasury and shall not, for purposes of any Federal

law, be considered to have been received by or to be within the control of such individual." Accordingly, since she did not serve on active duty for three years, Petitioner is neither eligible to receive MGIB benefits nor to a refund of her contributions.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. After reviewing the relevant evidence of record it is clear that ADB found that Petitioner had committed misconduct by reason of civil conviction and was an alcohol rehabilitation failure, but had not committed a serious offense. However, CNP incorrectly directed separation by reason of misconduct due to commission of a serious offense instead of civil conviction. Based on this conclusion, the Board found that correcting her separation code to reflect the correct reason for separation is appropriate. However, no further relief is appropriate. 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 On 22 July 1994 she received a separation code of "GKB" vice the separation code of "GKQ" that was actually issued.

b. That no further relief be granted.

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.

c. 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 reference being made a part of Petitioner's naval record.

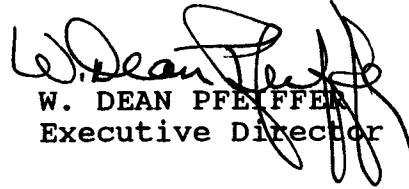
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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 it 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 PFENFFER
Executive Director