



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

CRS  
Docket No: 5143-03  
19 August 2003

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, filed enclosure (1) with this Board requesting, in effect, that her naval record be corrected by changing the RE-4 reenlistment code assigned on 5 April 2001.

2. The Board, consisting of Mr. Caron, Ms. Schnittman, and Mr. Washington, reviewed Petitioner's allegations of error and injustice on 30 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. Enclosure (1) was filed in a timely manner.

c. On 12 February 2001 a grand jury charged Petitioner with robbery and a warrant was issued for her arrest. However, the record fails to reflect that she was arrested, or that she knew of the indictment. On 28 February 2001 she enlisted in the Navy after stating, in an application for a security clearance, that she had never been charged with a felony and there were no charges pending against her.

d. On 5 April 2001 the commanding officer directed Petitioner's separation based on concealment of preservice civil involvement. On that same date, she was separated with an entry

level separation by reason of misconduct due to fraudulent enlistment. At that time, she was assigned a reenlistment code of RE-4.

e. With her application, Petitioner has submitted a letter from the Senior Assistant Commonwealth's Attorney of Virginia that states, in effect, that Petitioner was not prosecuted for robbery, but was very helpful in assisting his office in uncovering the facts in the robbery case. In her application, Petitioner claims that she knew nothing about the grand jury charge and was innocent.

f. An individual may be separated by reason of fraudulent enlistment if there is a false representation or deliberate concealment of a disqualifying factor. An RE-4 reenlistment code is required under such circumstances. An individual may be separated due to erroneous enlistment if the enlistment would not have occurred if the relevant facts had been known, but there was no fraudulent conduct on the individual's part. Applicable directives authorize the assignment of either an RE-3E or RE-4 reenlistment code to an individual separated for erroneous enlistment.

#### 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 believes Petitioner when she states that she knew nothing about the grand jury charge, and notes the letter from the Commonwealth's Attorney basically confirms her version of events. Therefore, the Board concludes that erroneous enlistment should be the reason for discharge. Accordingly, the Board recommends that Petitioner's reason for separation be changed to erroneous enlistment vice misconduct due to fraudulent enlistment.

The Board also concludes that the reenlistment code of RE-3E should be assigned since there is no evidence that Petitioner had any performance problems or disciplinary infractions during her brief period of service and her record does not otherwise support the more stigmatizing code of RE-4.

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 5 April 2001 she received an entry level separation by reason of erroneous enlistment and an RE-3E reenlistment code, vice the reason for separation and reenlistment code actually assigned on that date.

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

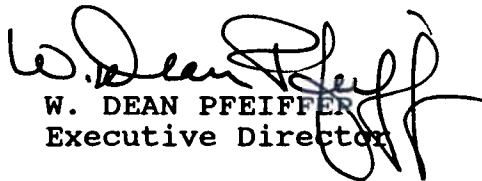
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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