



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

SJN
Docket No: 00132-10
28 January 2010

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 with 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 reconsideration of his RE-4 reenlistment code.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 January 2010 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 enclosure (1) 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 and began a period of active duty on 21 June 2005 at age 19. On 22 June 2005, during the "Moment of Truth", he revealed that his 15 year old girlfriend was pregnant. At that time, all applicants were required to disclose if their wife, girlfriend, or significant other was pregnant and were 100 percent sure the unborn child was theirs. He was counseled that he was being retained in the naval

service despite his fraudulent induction as evidenced by his failure to disclose required basic enlistment eligibility information, and if it was found that additional information had not been disclosed, he could be subject to other judicial or administrative proceedings.

d. On 3 August 2005, Petitioner submitted a voluntary statement stating, in part, that he was 18 years of age at the time he met his then 14 year old girlfriend. Further, he stated that they started having sexual intercourse when she was 15 years of age in January 2005, and that he informed his recruiter, but was told to stay quiet about it.

e. On 10 August 2005, administrative discharge action was initiated to separate him by reason of fraudulent enlistment. He elected to consult counsel and have his case reviewed by the general court-martial convening authority. However, the review is not in his official record. On 16 August 2005, his commanding officer (CO) forwarded his case recommending that he be discharged from the service with an entry level separation by reason of fraudulent entry due to his pregnant 15 year old girlfriend. He was discharged on 26 August 2005 with an entry level separation for fraudulent entry and assigned an RE-4 reenlistment code. The RE-4 means that he is not recommended for reenlistment. However, he could have been assigned a code of RE-3E meaning that he was enlisted in error.

f. With his application, Petitioner states that on 10 August 2005, his CO called him into his office while on the telephone with his girlfriend's mother. He states, in part, that his CO was trying to convince her to press charges against him, but that she was trying to inform him that Petitioner was simply trying to support his family and serve his country. Finally, after his discharge, he states that his daughter was born on 27 October 2005, and he married his girlfriend on 2 December 2005.

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 therefore concludes that no useful purpose is served by assignment of the most restrictive reenlistment code of RE-4, and assignment of an RE-3E, meaning he was enlisted in error, more accurately reflects the reason for discharge. Finally, the Board concludes that the discharge was proper, and the record should reflect that an erroneous entry had occurred. In view of the foregoing, the Board recommends the following corrective action:

RECOMMENDATION:

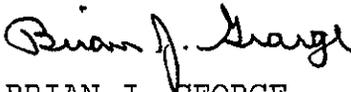
a. That Petitioner's naval record be corrected to show that on 26 August 2005, he was discharged due to erroneous entry (other), assigned a JFC separation code, and received an RE-3E reenlistment code, vice the RE-4 actually issued on that date. This should include the issuance of a new DD Form 214.

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.

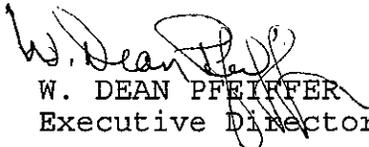
c. That any material direct to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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


BRIAN J. GEORGE
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 Regulation, 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