



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

TJR
Docket No: 7087-11
27 July 2011

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: [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, in effect, that his record be corrected to show that he was transferred to the Navy Fleet Reserve vice discharged on 9 December 2010.

2. The Board, consisting of Mr. Garst, Mr. Sproul, and Ms. Zivnuska, reviewed Petitioner's allegations of error and injustice on 26 July 2011 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. Petitioner enlisted in the Navy, began a period of active duty on 16 July 1991, and served without disciplinary incident. However, on 3 October 2008, Petitioner voluntarily submitted a written statement regarding his long term inappropriate relationship with his minor step-daughter during the period from 1999 to 2001. As a result of this conduct, he was denied

retention and reenlistment. Subsequently, the Chief of Naval Personnel (CNP) processed him for an administrative separation by reason of nonretention on active duty. On 9 December 2010, while serving in paygrade E-8, he was honorably discharged and assigned an RE-4 reenlistment code.

d. The Petitioner filed a Complaint of Wrongs regarding his denial of retention on active duty and being discharged from the Navy. As such he requested to be granted conditional reenlistment to serve until he was retirement eligible. On 17 March 2011, the Vice Chief of Naval Operations (VCNO) reviewed the Complaint of Wrongs and determined the CNP properly denied his request for reenlistment based on his self-admittance of inappropriate conduct with a minor. Nonetheless, the VCNO concluded that he was wrongfully discharged after serving for nearly 20 years on active duty. In this regard, VCNO recommended that relief in the form of "constructive service credit" be granted to allow him to reach retirement eligibility.

e. On 7 April 2011 the Deputy Assistant Judge Advocate General (Administrative Law) (JAG/AL) concurred with the recommendation of the VCNO. However, the JAG/AL further recommended that the determination for corrective action be made by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)), if this Board also concurred with the VCNO and JAG/AL. In other words, JAG/AL specifically recommended that ASN(M&RA), acting for the Secretary of the Navy (SECNAV), make the determination to correct the record, vice this Board, if warranted.

f. On 15 July 2011, after review of the Complaint of Wrongs by ASN(M&RA), the Board was directed to review the Complaint of Wrongs and provide a recommendation to correct the record, if warranted, to reflect six months of constructive service credit, which would make Petitioner retirement eligible.

g. The Uniform Retirement Date Act, 5 U.S.C. 8301, requires that the effective date of any retirement be the first day of the month following the date of separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. The Board finds that he was wrongfully discharged after serving 19 years, four months, and 19 days on active duty. Therefore, the Board, in concurrence with the VCNO and JAG/AL, concludes that his record should be corrected to reflect six months of constructive service credit. In this regard, the record should be corrected to show that he was retired from the Navy and transferred to the Navy Fleet Reserve on 1 July 2011.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was retired and transferred to the Navy Fleet Reserve on 1 July 2011, while serving in paygrade E-8, vice discharged on 19 December 2010.

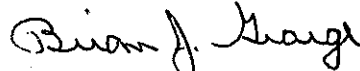
b. That this Report of Proceedings be filed in his naval record.

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 in the record in the future.

d. 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 purposes, 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. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:


29 Jun 11

Reviewed and disapproved: