



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

TJR
Docket No: 12438-10
7 July 2011

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) OPNAVINST 1160.5 (series)
(c) BUPERSINST 1900.8 (series)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy Reserve, filed enclosure (1) with this Board requesting that his RE-4 (nonrecommendation for retention) reenlistment code be changed.

2. The Board, consisting of Ms. Aldrich, Mr. Rothlein, and Mr. Silberman, reviewed Petitioner's allegations of error and injustice on 6 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. In addition, the Board considered the Naval Discharge Review Board (NDRB) decisional document number ND09-02189 dated 26 August 2010.

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 Reserve on 22 April 2003 at age 33. He served without disciplinary incident and was advanced to paygrade E-4.

d. Petitioner's record reflects that he satisfactorily participated in drills during the period from March 2003 to July 2004. However, in August 2004, he failed to meet the Navy's physical fitness assessment (PFA) standards, and as such, he could not participate in training. In this regard, he was subsequently returned to his reserve unit. The record further reflects that his reserve unit, on multiple occasions, did not allow him to participate in drills and was refused participation without explanation.

e. As a result of the foregoing, Petitioner was processed for an administrative separation. On 18 January 2005 he was issued a general discharge by reason of unsatisfactory participation in the Ready Reserve. At that time he was assigned an RE-4 reenlistment code.

f. In August 2010 the NDRB upgraded the characterization of Petitioner's service to "honorable" and changed the narrative reason for separation to "secretarial authority" because of an impropriety in the discharge action. The NDRB stated, in part, that although the discharge was proper, it was not equitable.

g. Reference (b) authorizes the issuance of an RE-4 reenlistment code to Sailors who have been separated due to unsatisfactory participation in the Ready Reserve. The assignment of an RE-4 reenlistment code under these circumstances means that a Sailor is not eligible for reenlistment due to nonrecommendation of retention, advancement, and reenlistment. However, reference (c) authorizes an RE-1 reenlistment code for a Sailor, such as Petitioner, who was honorably discharged by reason of secretarial authority.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board notes that Petitioner served satisfactorily and without disciplinary infractions. He was improperly processed for separation and assigned an RE-4 reenlistment code based solely on his nonparticipation in the Ready Reserve.

The Board substantially concurs with the decision of the NDRB and believes that Petitioner's nonparticipation in the Ready Reserve was not of his own doing and therefore he should not suffer the consequences of a restrictive reenlistment code. The Board notes

that an RE-1 reenlistment code is now authorized by regulatory guidance for a Sailor who is separated by secretarial authority and believes that such a code is now the most appropriate reenlistment code for his situation. In this regard, the record should be corrected to show that he was assigned an RE-1 reenlistment code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was assigned an RE-1 reenlistment code on 18 January 2005 vice the RE-4 reenlistment code actually assigned on that date.

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.

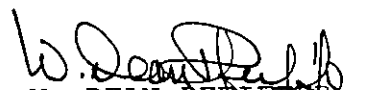
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purposes, with no cross references being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c), 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