



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

TRG  
Docket No: 8314-98  
2 June 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 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, an enlisted member of the United States Navy filed enclosure (1) with this Board requesting that his record be corrected to show continuous active service from 12 November 1982 until 24 June 1985.

2. The Board, consisting of Mr. Kastner, Mr. Mazza and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 25 May 1999 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 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 on 14 November 1978 at age 18. He then served without incident until he was released from active duty on 12 November 1982 with his service characterized as honorable. At that time he was not recommended for reenlistment and was assigned an RE-4 reenlistment code because of a positive urinalysis. He was honorably discharged at the end of his military obligation on 9 February 1984

d. Petitioner has included with his application a letter, dated 25 March 1985, from the Naval Military Personnel Command (NMPC). The letter states, in part, as follows:

The Army discovered that some Navy personnel were reported as testing positive in the Department of Defense drug abuse urinalysis testing program by Army Drug Screening Labs during a specific period of time and that these positive reports could not be sufficiently substantiated. Accordingly, the Chief of Naval Operations has directed reversal of all adverse action(s) taken against such individuals as the result of these unsubstantiated tests. ...

... Your case has been reviewed and all service record entries relating to the unsubstantiated urinalysis test have been removed from your record.

In addition, your discharge has also been reviewed and a determination was made that your reenlistment code should be upgraded. Enclosed is a new Certificate of Release or Discharge from Active duty (DD Form 214) with a reenlistment code of RE-1. All copies of the original DD 214 should be replaced with the new one.

e. A review of Petitioner's record reveals that the revised DD Form 214 with the RE-1 reenlistment code is the only such form in his record, and there is no other documentation showing the results of the urinalysis. However, the Enlisted Performance Record (page 9) still shows that on the date of his release from active duty on 12 November 1982, he was assigned an adverse mark of 2.8 in military behavior and was not recommended for reenlistment.

f. Petitioner states that he reenlisted in the Navy as soon as possible after the NMPC letter of 25 March 1985. The record shows that he reenlisted in the Navy on 24 June 1985 for two years. He was honorably discharged on 22 June 1987 and was assigned an RE-R1 reenlistment code. He reenlisted in the Navy on 23 September 1987 and has served continuously on active duty since then. Accordingly, he now has over 17 years of active service. If his application is granted he will be probably be eligible to transfer to the Fleet Reserve.

g. The Board considered numerous cases in the mid-1980's concerning urinalyses which were invalidated. Since the Board could not separate the guilty from the innocent, the interest of justice required that relief be granted in those cases. Therefore, the Board did everything in its power to correct the records as if the invalid urinalysis had not occurred.

h. Petitioner states that he did not apply to the Board at an earlier date because he did not know there was a time

limitation and he did not want to jeopardize his career in the Navy. He states that he desires the correction at this time because he is involved in a child-custody dispute with his ex-wife, and an early retirement might increase his chances of obtaining custody of his children.

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 was aware on 25 March 1985 about the invalid urinalysis but then waited for over 14 years to apply for corrective action. However, since the urinalysis has been invalidated, the Board believes that if he had applied in 1985, relief would have been granted. Given the circumstances, the Board concludes that the record should now be corrected to show continuous active duty during the period 13 November 1982 until 23 June 1985.

The Board believes the best way to implement this action is to correct the record to show that Petitioner reenlisted in the Navy on 13 November 1982 for three years. The record can continue to show that he reenlisted in the Navy for two years on 24 June 1985.

The Board also believes that the 12 November 1982 adverse mark of 2.8 in military behavior and the entry showing he was not recommended for reenlistment were only entered on the page 9 because of the invalid urinalysis. Therefore, the 2.8 mark should be removed from the page 9 and the entry should show that he was recommended for reenlistment.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he reenlisted in the Navy on 13 November 1982 for three years and served on active duty until he was honorably discharged on 23 June 1985.
- b. That the Enlisted Performance Record (Page 9) be corrected by deleting the 12 November 1982 mark of 2.8 in military behavior and changing the next entry to show that he was recommended for reenlistment.
- 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.
- d. That any material directed to be removed from Petitioner's

naval record be returned to the Board, together with 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.

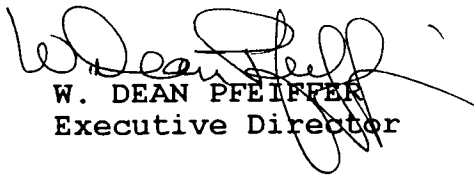
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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 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