



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

AEG
Docket No. 8242-00
10 April 2002

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) Case Summary
(2) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, applied to this Board requesting that his naval record be corrected by changing his separation code to make him eligible for separation pay.

2. The Board, consisting of Messrs. Mackey and Pauling and Ms. McCormick reviewed Petitioner's allegations of error and injustice on 9 April 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner first enlisted in the Marine Corps on 13 June 1988 and he reenlisted on 4 November 1993. He then served until 7 January 1998, when he received a general discharge by reason of misconduct. At that time, he received an RE-4 reenlistment code, which disqualified him from future active or reserve service. Even though he served on active duty for 9½ years over the course of two enlistments, Petitioner was not eligible to receive separation pay because he was discharged by reason of misconduct.

d. In June 2000 the Naval Discharge Review Board (NDRB) reviewed Petitioner's case and changed the characterization of

service to honorable and the reason for separation to secretarial authority, with a separation code of "JFF." Petitioner subsequently contacted the Defense Finance and Accounting Service (DFAS), advised DFAS of NDRB's favorable action and requested separation pay. However, on 15 November 2000 DFAS advised him that "your separation code of JFF does not authorize any monetary payment of separation pay."

e. The Deputy Assistant Judge Advocate General (DAJAG) for Administrative Law has provided an advisory opinion of 4 April 2002 to the effect that Petitioner's discharge by reason of secretarial authority entitles him to separation pay. In support of this conclusion, the opinion cites 10 U.S.C. § 1174(b), Department of Defense Instruction (DODINST) 1332.29, Secretary of the Navy Instruction (SECNAVINST) 1900.7G, and Appendix D of the Procedures Training Guide of the Defense Joint Military Pay System (DJMS).

f. 10 U.S.C. § 1174 states, in part, as follows:

(b) Regular enlisted members.--(1) A regular enlisted member of an armed force who is discharged involuntarily . . . and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d) except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense (SECDEF).

(d) Amount of separation pay.--The amount of separation pay which may be paid to a member under this section is--

(1) 10 percent of the product of (A) his years of active service and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

§ 1174(e) states that in order to receive separation pay, an individual must agree to serve for three years in the ready reserve after discharge.

g. In accordance with the authority set forth in § 1174(b)(1), DODINST 1332.29¹ and SECNAVINST 1900.7G² list certain circumstances which render an individual ineligible for

¹ ¶ 3.4.

² ¶ 9.

separation pay. However, neither list states that separation by reason of secretarial authority is a disqualifying factor.

h. DODINST 1332.29 implements the authority set forth in § 1174(b)(2) by directing only half separation pay for individuals separated involuntarily with an honorable or general discharge who are not fully qualified for retention.³ However, this authority is limited to those individuals separated for certain reasons. Secretarial authority is not one of these reasons.⁴ Provisions of SECNAVINST 1900.7G are in accord with the foregoing.⁵

i. The DJMS Procedures Training Guide states that an individual separated by reason of secretarial authority, with separation code JFF, is entitled to full separation pay.⁶

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that corrective action is warranted. In this regard, the Board concurs with the DAJAG advisory opinion that Petitioner is entitled to full separation pay

The entitlement of a regular enlisted member to separation pay is governed by § 1174(b)(1). That provision of law establishes a presumption that an individual such as Petitioner is so entitled, but also empowers the secretary concerned to disqualify certain individuals from receiving such pay. However, neither DODINST 1332.29 nor SECNAVINST 1900.7G states that individuals separated by reason of secretarial authority are ineligible for separation pay. Accordingly, it is clear that Petitioner is entitled to some measure of separation pay. Likewise, § 1174(b)(2) authorizes SECDEF to limit certain individuals to one-half of the full amount of separation pay. He has exercised that authority in DODINST 1332.29, but individuals separated by reason of secretarial authority are not included in this limitation.

Based on the foregoing, the Board concludes that Petitioner became entitled to full separation pay when NDRB changed the reason for separation from misconduct to secretarial authority. This conclusion is buttressed by the fact that the Procedures Guide to the DJMS so states.

The Board notes that Petitioner did not agree to serve for three years in the ready reserve at the time of separation. However, since he was discharged for misconduct, he was ineligible for reserve service as well as separation pay, so he was not given an opportunity to fulfill this requirement. Accordingly, his failure to do so should not now preclude the award of such pay.

³ ¶ 3.2.

⁴ ¶ 3.2.3.1.

⁵ ¶ 8.

⁶ App. D, p. D-5.

RECOMMENDATION:

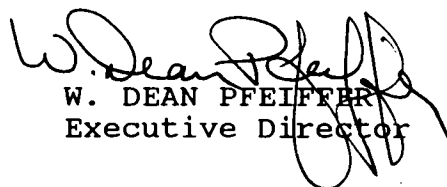
- a. That Petitioner's naval record be corrected to show that on 7 January 1998 he agreed to serve in the ready reserve for three years.
 - b. That the record be further corrected by amending Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) by adding to block 18 (Remarks) the statement "Entitled to full separation pay."
 - 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 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



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 5e of the Procedures for the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6[e]), and having ensured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the provisions of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director