



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

ELP
Docket No. 2341-01
10 August 2001

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 w/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, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable discharge and reenlistment code than the other than honorable discharge and RE-4 reenlistment code issued on 28 December 2000.

2. The Board, consisting of Messrs. Ivins, Silberman, and Frankfurt reviewed Petitioner's allegations of error and injustice on 8 August 2001 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. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 February 2000 for four years. At that time, he also agreed to extend his

enlistment for an additional period of 24 months in exchange for training in the advanced electronics field and accelerated advancement to pay grade E-4.

d. On 28 August 2000 Petitioner was formally counseled regarding three unspecified periods of unauthorized absence (UA). He served without further incident until 11 October 2000 when he received nonjudicial punishment (NJP) for two instances of failure to go to his appointed place of duty.

e. On 21 November 2000 Petitioner received a second NJP for a one-day period of UA, and four instances of failure to go to his appointed place of duty. Thereafter, he was notified that action was being initiated to separate him by reason of misconduct due to a pattern of misconduct. He was advised of his procedural rights, declined to consult with legal counsel and waived the right to present his case to an administrative discharge board. However, he did submit a statement in his own behalf, explaining the circumstances surrounding his failures to go to his appointed place of duty and asserting that his offenses did not warrant a discharge under other than honorable conditions.

f. On 8 December 2000 the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. The discharge authority approved the recommendation and Petitioner was so discharged on 28 December 2000. His DD Form 214 shows two periods of UA, totaling about seven days, for which no disciplinary action is shown in the record.

g. Regulations provide that individuals separated within the first 180 days of active duty will received an uncharacterized entry level separation. Regulations authorize separation by reason of misconduct due to a pattern of misconduct if an individual receives two or more NJPs during the current enlistment. Such separations are normally under other than honorable conditions, but a general discharge is also authorized. An honorable characterization is not authorized unless approved by the Chief of Naval Personnel or higher authority. Regulations also require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct.

h. Petitioner requests that his discharge be changed to an entry level separation.

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 notes Petitioner did not meet the criteria for an entry level separation since processing for discharge commenced after he had served on active duty for more than 180 days. However, the Board further notes Petitioner's youth and immaturity, and that the offenses for which he received two NJPs were relatively minor. Although Petitioner met the criteria for separation due to a pattern of misconduct, the Board does not believe that his misconduct was sufficiently serious to warrant the life-long stigma of a discharge under other than honorable conditions. Accordingly, the Board concludes that it would be appropriate and just to recharacterize his other than honorable discharge to a general discharge under honorable conditions. However, the Board further concludes that his reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that he was issued a general discharge on 28 December 2000 vice under other than honorable conditions actually issued on that date.


b. That no further relief be granted.

c. That a copy of the Report of Proceedings be filed in Petitioner's naval record.

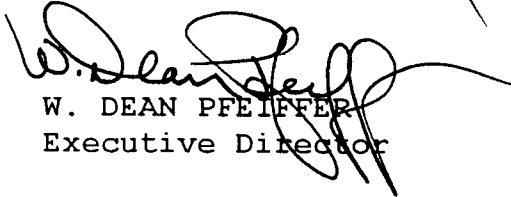
d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 10 March 2001.

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