



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

ELP  
Docket No. 2740-01  
24 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 by changing the discharge under other than honorable conditions and RE-4 reenlistment code issued on 27 September 1996.

2. The Board, consisting of Messrs. Pfeiffer, Zsalman, and Neuschafer reviewed Petitioner's allegations of error and injustice on 22 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. Although it appears that Petitioner's application to the Board 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 22 April 1996 for four years as an SN (E-3). At that time, he agreed to extend his enlistment for an additional period of 24 months in exchange for training in the Nuclear Field Program and accelerated advancement to pay grade E-4.

d. A drug and alcohol abuse report was filed on 24 July 1996 which reported Petitioner's use of marijuana. The report noted that the method of identification was made through command/supervisor and not through urinalysis.

d. On 25 July 1996 Petitioner received nonjudicial punishment (NJP) for use of marijuana. Punishment imposed consisted of a reduction in rate to SA (E-2), forfeitures of one-half a month's pay for two months, and 45 days of restriction. Additionally, he was dropped from the Nuclear Field Program.

e. On 20 August 1996 Petitioner was notified that administrative separation action was being initiated by reason of misconduct due to drug abuse. He was advised of his procedural rights and told that if discharge was approved, it could be under other than honorable conditions. He declined to consult with legal counsel and waived the rights to be represented by counsel and to present his case to an administrative discharge board. Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse. On 1 September 1996, the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. Petitioner was so discharged on 27 September 1996 and assigned an RE-4 reenlistment code.

f. Regulations provide that a separation initiated within the first 180 days of continuous active duty will be described as an uncharacterized entry level separation, unless characterization under other than honorable conditions is warranted. Such a characterization is authorized for misconduct due to drug abuse. Regulations also require the assignment of an RE-4 reenlistment code to an individual separated by reason of misconduct.

g. Petitioner provides evidence that since his discharge, he has earned an associates degree, served in the Army National Guard for nearly two years, and has been advanced to Specialist

E-4. However, he has been denied entrance into the Reserve Officers' Training Corps and Officer Candidate School Program due to his RE-4 reenlistment code.

h. Petitioner states that when he contracted for the nuclear field program, he was assured by recruiting officials that if he could qualify for the SEALs, he could be released from his contract and be sent to Basic Underwater Demolition School. However, while attending recruit training, he learned that what he was told was not true for those individuals who were in the nuclear field program. He claims he was told that any change would have to be done at the Nuclear Power Training Command, but that command told him that he should have resolved the matter while in recruit training. After receiving no satisfaction from his chain of command, he states he became frustrated and decided to get thrown out of school. He claims that at a weekend party, some classmates got into trouble and were caught smoking marijuana. He states that he asked them to say that he was with them so he could be thrown out of nuclear power school for using drugs. They did exactly that and he did not dispute his involvement. However, he did not intend to be discharged but only wanted to be thrown out of school. He 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 that subsequent to his discharge, he has earned an associates degree, served in the Army National Guard and was advanced to Specialist (E-4). It appears to the Board that Petitioner was identified as a drug abuser not through urinalysis, but by his own admission. The Board found it disturbing that a urinalysis was not directed to confirm his admission prior to processing him for separation. While the Board does not condone drug abuse, the Board also does not believe this single incident of misconduct while in an entry level status warrants the life-long stigma of a discharge under other than honorable conditions. Accordingly, the Board concludes that it would be appropriate and just to correct the record to show he received an uncharacterized entry level separation by reason of misconduct due to drug abuse. Since he was treated no differently than others discharged under similar

circumstances, the Board could find no error or injustice in his assigned reenlistment code. The fact that he desires to enroll in an officer program does not provide a valid basis for changing a correctly assigned reenlistment code.

RECOMMENDATION:

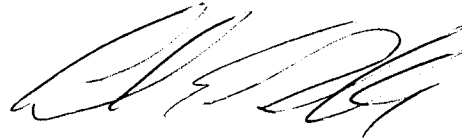
a. That Petitioner's naval record be corrected by showing that he received an uncharacterized entry level separation by reason of misconduct due to drug abuse on 27 September 1996 vice the discharge under other than honorable conditions actually issued on that date.

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

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 4 April 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.



For W. DEAN PFEIFFER  
Executive Director