



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

CRS
Docket No: 3047-01
20 August 2001

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

Subj: REVIEW OF NAVAL RECORD OF EX-SR [REDACTED]
USN [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, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by changing the reason for discharge and reenlistment code assigned on 7 October 1997.

2. The Board, consisting of Ms. Schnittman, Mr. Mazza, and Mr. Novello, reviewed Petitioner's allegations of error and injustice on 15 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 enclosure (1) was not filed in 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 7 August 1997 at age 19. At the time of enlistment he had completed 12 years of formal education.

d. On 29 September 1997, while still in recruit training, Petitioner was diagnosed as drug dependent, a condition existing prior to his enlistment. On 7 October 1997, Petitioner received a void enlistment by reason of erroneous entry based on drug

dependency. At that time he received a reenlistment code of RE-4.

e. Title 10 U.S.C. 978 states, in part, that an enlistment will be voided if the individual is determined to be dependent on drugs or alcohol. However, a void enlistment may be issued only if the diagnosis is made within 72 hours of entry on active duty.

f. Sailors diagnosed in recruit training as drug or alcohol dependent may properly be separated with an entry level separation by reason of erroneous entry with a reenlistment code of RE-4.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board concludes that his void enlistment should be changed to an entry level separation. In this regard, Petitioner was not diagnosed as drug dependent within 72 hours of his entry on active duty. Absent a diagnosis within that time frame, a void enlistment was inappropriate and Petitioner should have been processed for an entry level separation due to erroneous entry, given the diagnosis of drug dependency. Therefore, the Board concludes that the record should be corrected wherever necessary to show that he was separated with an entry level separation by reason of erroneous enlistment.

Although Petitioner has requested that the reason for discharge be changed, he presented no evidence to show that his drug dependence was incorrectly diagnosed. Therefore, the Board concludes that Petitioner was properly processed for separation by reason of erroneous enlistment, and his request for a change in his reason for discharge should be denied.

Concerning Petitioner's request for a change in his reenlistment code, an RE-4 reenlistment code is appropriate in Petitioner's case since he was separated prior to completing recruit training by reason of erroneous entry due to drug dependency. Such a code is required under these circumstances.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he received an entry level separation by reason of erroneous entry on 7 October 1997 vice the void enlistment now of record.

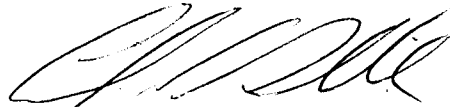
b. That no further relief be granted.

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.



For W. DEAN PFEIFFER
Executive Director