



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

TJR
Docket No: 3524-01
16 July 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 United States Navy, filed enclosure (1) with this Board requesting, in effect, changes in her reenlistment code and narrative reason for separation.

2. The Board, consisting of Messrs. Brezna, Dunn, and Mackey, reviewed Petitioner's allegations of error and injustice on 10 July 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. Enclosure (1) was filed in a timely manner.

c. On 27 October 2000 Petitioner enlisted in the Delayed Entry Program of the Naval Reserve. On that same date, she stated that there were no civil charges pending against her. She then enlisted in the Navy on 7 November 2000.

d. On 5 December 2000 Petitioner advised LN2 B, the frauds and waiver paralegal at Recruit Training Command, that she had an active arrest warrant for a domestic assault which occurred on 1 June 2000. LN2 B then tried to obtain a copy of the arrest warrant. This request was denied, but LN2 B was informed that Petitioner would have to appear before a judge once a court date was set during the next three to four weeks.

During my interview, I found (Petitioner) to be very motivated, however, she was not honest about having knowledge of the warrant prior to entry. Also, I had spoken with (Petitioner's) father, who stated that they were trying to resolve the issue of the domestic assault prior to her entry into the Navy.

f. Subsequently, Petitioner was processed for an administrative separation by reason of fraudulent enlistment. On 28 December 2000 Petitioner was issued an uncharacterized entry level separation, and was assigned an RE-4 reenlistment code. There is no indication in the record that Petitioner had any other problems in recruit training during her brief period of service.

g. On 30 December 2000 Petitioner was served with an arrest warrant for misdemeanor domestic assault and ordered to appear before a judge on 8 January 2001. Subsequently, on 15 February 2001, Petitioner entered a plea of not guilty and the charge was dismissed.

h. In her application, Petitioner contends that she was unaware that the arrest warrant had been issued until she called home after four weeks in recruit training, and she then immediately informed LN2 B of this development.

i. An RE-4 reenlistment code must be issued to an individual separated by reason of fraudulent enlistment. An RE-3E reenlistment code may be assigned to individuals separated by reason of erroneous enlistment. This reason for separation is appropriate if an enlistment would not have occurred had the relevant facts been known, and it was not the result of fraudulent conduct on the part of the individual. An individual separated for this reason may also receive an RE-4 reenlistment code, which means that the individual is not recommended for reenlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board initially notes that Petitioner served without disciplinary infractions, and that she was only separated by reason of fraudulent enlistment because it was believed that she knew about the arrest warrant at the time of her enlistment. However, she now denies that she had any knowledge of the warrant at that time, and states that she only became aware of its existence when she called home from recruit training. Along

these lines, it is clear that she is the one who brought this information to the attention of authorities at RTC, in an effort to rectify the problem. In this regard, the Board believes that had Petitioner known about the warrant for her arrest at the time of her enlistment, she would have disclosed this information at that time. The Board also notes that nearly five months elapsed from the date of the incident until the date of Petitioner's enlistment, and she was not served with the warrant until after she was discharged. Finally, the Board cannot ignore the fact that the charges on which the warrant was based were later dismissed.

Accordingly, the Board believes that Petitioner did not have knowledge of the arrest warrant at the time of her enlistment and therefore did not commit a fraudulent enlistment. However, it does not appear that she would have been enlisted had recruiting authorities known of the arrest warrant. Therefore, the Board concludes that the narrative reason for separation should be changed to erroneous enlistment. Since an RE-3E reenlistment code is authorized by regulatory guidance for individuals who are separated by reason of erroneous enlistment, and given Petitioner's overall record, the Board concludes that an RE-3E reenlistment code is more appropriate than the RE-4 reenlistment code now of record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing her narrative reason for separation and reenlistment code to erroneous enlistment and RE-3E, respectively, vice the reason for separation and reenlistment code now of record.

b. 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.

c. 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.

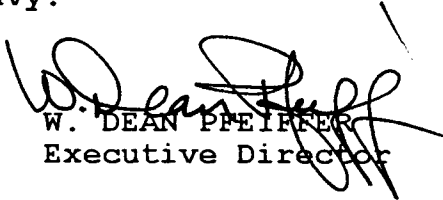
ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

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Recorder

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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 Regulation, 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



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

[REDACTED] USNR
[REDACTED]
[REDACTED]

Dear Commander [REDACTED]

This refers to your application dated April 14, 1999, for correction of your naval record.

I have reviewed and approved the recommendation of the Board for Correction of Naval Records to deny relief in your case. Within 90 days, you may request the Secretary of Defense to reconsider this decision, pursuant to Department of Defense Directive 7050.6. Subject: Military Whistleblower Protection.

Sincerely,
[REDACTED]
[REDACTED]

Senior Civilian Official
Office of the Assistant Secretary
of the Navy (Manpower and Reserve
Affairs)