



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

ELP

Docket No. 7900-00

6 April 2001

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

Subj: REVIEW OF NAVAL RECORD [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, applied to this Board requesting, in effect, that his record be corrected to show that he was released from active duty on 31 August 1995 instead of 16 August 1995.

2. The Board, consisting of Messrs. Swarens, Lightle, and Carlsen reviewed Petitioner's allegations of error and injustice on 4 April 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 Naval Reserve on 24 June 1993 for eight years. He was ordered to active duty on 1 September 1993 for a period of two years.

d. Petitioner's reflects that he was advanced to SN (E-3) and served without incident until 15 June 1995 when he received a nonjudicial punishment (NJP) for use of provoking speech and gestures, assault, and disorderly conduct. Punishment imposed was a suspended reduction in rate to SA (E-2), forfeiture of \$100, and 45 days of restriction and extra duty.

e. On 16 August 1995, Petitioner was honorably released from active duty by reason of "Completion of Required Active Service" and transferred to the Naval Reserve. His DD Form 214 shows he completed one year, 11 months, and 16 days of active service. Upon release from active duty, he was paid for 25 days of accrued leave.

f. Petitioner states that since ^{he} was released 14 days early, he is ineligible for Department of Veterans Affairs (DVA) benefits. He asserts that he was guaranteed a full two years of service.

g. Commander, Navy Personnel Command (Pers-604) advised a staff member of the Board that individuals discharged for the foregoing reason must complete a full 24 months of active service in order to be eligible for DVA benefits.

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 believes that had Petitioner been advised that he would be ineligible for DVA benefits if he did not complete a full 24 months of active duty, he would have elected either to complete the additional 14 days or requested terminal leave, since he had 25 days of accrued leave at the time of his release from active duty. Accordingly, the Board concludes that it would be appropriate and just to show that Petitioner was placed on terminal leave on 16 August 1995 and was honorably released from active duty on 31 August 1995 when he would complete two years of active service.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was placed on terminal leave on 16 August 1995 and was honorably released from active duty on 31 August 1995 vice the release on 16 August 1995 now of record.

b. That the record be further corrected to show that upon release from active duty on 31 August 1995, he was paid for 11 days of accrued leave.

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 references being made a part of Petitioner's naval record.

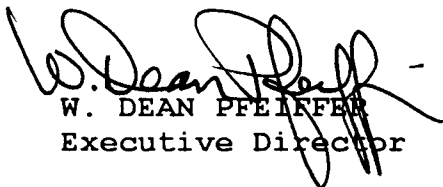
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

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.



W. DEAN PFEIFFER
Executive Director