



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

CRS
Docket No: 8162-00
26 February 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
(b) BUPERSINST 1900.8

Encl: (1) Case Summary
(2) 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 RE-4 reenlistment code assigned on 28 December 1999.

2. The Board, consisting of Mr. Beckett, Mr. McPartlin, and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 21 February 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. Petitioner enlisted in the Navy on 7 December 1999 at age 20.

d. On 8 December 1999 Petitioner submitted to an accession urinalysis that tested positive for marijuana. Subsequently, on 28 December 1999 he received an entry level separation by reason of erroneous entry due to drug abuse. At that time he was

assigned a reenlistment code of RE-4.

e. In an attachment to his application, Petitioner admits that he used marijuana just prior to recruit training due to peer group pressure, a decision he now regrets. He further states that he told his recruiter of his misconduct prior to departing for recruit training, but alleges that the recruiter advised him to drink green tea in order to cleanse his system. He requests a "second chance" since he says that he was told that he could reenlist after six months.

f. With his application, Petitioner has submitted a statement from a recruiter with whom he is now working, who points out that at the time of Petitioner's separation an individual who tested positive for marijuana only in an accession urinalysis could be considered for a waiver of the RE-4 reenlistment code. However, the Navy Recruiting Manual has recently been changed to eliminate such waiver authority, and to not allow such a "second look." The recruiter also states that Petitioner may well be correct in his assertion that the prior recruiter "forced" Petitioner to go to recruit training. He notes that under current standards, individuals in Petitioner's situation may be "rolled back" to a later date if they may test positive in a urinalysis. This recruiter supports Petitioner's application, stating that he "made a mistake and is trying to correct it."

g. Reference (b) indicates that for an individual in Petitioner's situation, an RE-4 reenlistment code must be assigned if the reason for separation is erroneous enlistment due to drug abuse. That code means that the individual is not recommended for reenlistment. An RE-3E reenlistment code can be assigned if there was some other form of erroneous enlistment. This reenlistment code means that the individual is recommended for reenlistment except for the disqualifying factor of the improper enlistment.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record a majority of Ms. Newman and Mr. McPartlin, concludes that Petitioner's request warrants favorable action. The majority concludes that based on the statements of Petitioner and the recruiter he is now consulting, the reenlistment code of RE-3E should now be assigned because Petitioner deserves a second chance, despite current regulations that require a reenlistment code of RE-4. A code of RE-3E will alert recruiting personnel that there was a problem with Petitioner's prior enlistment which must be resolved before reenlistment is authorized.

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

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 28 December 1999, Petitioner was assigned an RE-3E reenlistment code instead of the RE-4 reenlistment code actually assigned on that date.

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.

MINORITY CONCLUSION:


The minority member of the Board, Mr. Beckett, disagrees with the majority on changing the RE-4 reenlistment code and concludes that no corrective action should be taken. He believes that giving relief to individuals such as Petitioner who used marijuana prior to recruit training disregards present policy and it is not the Board's responsibility to set policy.

MINORITY RECOMMENDATION:

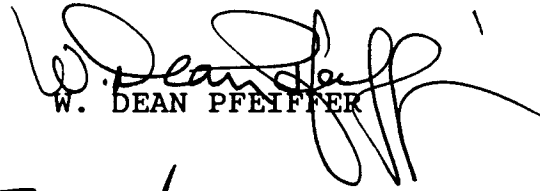
That no relief be granted.

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.

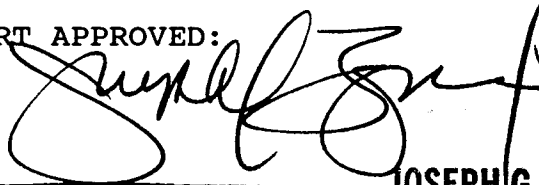
ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

MAJORITY REPORT APPROVED:

 APR - 4 2001

JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)

~~MINORITY REPORT APPROVED:~~