



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

LCC:lc  
Docket No: 8344-01  
29 November 2001

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



Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Series of Documents  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that his enlistment of 23 January 1986 into the Naval Reserve and the Delayed Enlistment Program (DEP) does not count for pay purposes.
2. The Board, consisting of Messrs. Exnicios, George, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 29 November 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. Public Law 98-525, set out in Title 10, United States Code at Section 205, states that effective on and after 1 January 1985 time served in the DEP before an initial period of active duty will not count for pay purposes.
  - c. The Department of Defense Management Regulations (DODFM), is derived from the statute and provides guidance and instructions to all Armed Services on military pay. The PEBD is computed based on information contained in the DODFM, Vol 7A, Chapter 1, which list creditable service in determining the PEBD. Paragraph 010104 lists other creditable service (with restrictions as noted). Paragraph 010104.m reads as follows "Service as an enlisted member in a Reserve Component before beginning active duty in a Regular Component, *provided the member enlisted in the Reserve Component before 1 January 1985*" (Italics added). This is frequently referred to as the delayed enlistment program.

d. Petitioner enlisted in the DEP on 23 January 1986 on an erroneous contract, in that, it was written in the contract that the period of time in the DEP is creditable for pay purposes upon entry into a pay status. That part of the contract is in error since the statute was changed effective 1 January 1985 and time spent in the DEP is not creditable for pay purposes. A recruiter does not have the authority to obligate the government for expenditure of monies in excess of those permitted by statute.

c. After reviewing the correspondence attached as enclosure (2), the Board concluded that the request has merit and warrants favorable action.

#### CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:


a. The sentence in paragraph a, on the enlistment document of 23 January 1986, starting on the fifth line which reads "I understand my period of time in the DEP is creditable for pay purposed upon entry into a pay status" will be corrected to read "I understand my period of time in the DEP is **NOT** creditable for pay purposes upon entry into a pay status".

b. Petitioner's Date of Initial Entry onto Active Duty and his PEBD will remain as 17 September 1986.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

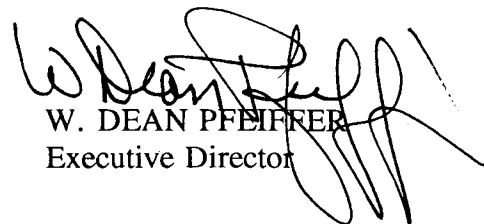
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
G. L. ADAMS  
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.

29 November 2001

  
W. DEAN PFEIFFER  
Executive Director