



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

WMP
Docket No. 08432-01
4 April 2002

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 Navy, applied to this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Ms. Gilbert, LeBlanc, and Mr. Neuschafer reviewed Petitioner's allegations of error and injustice on 3 April 2002 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 Navy on 8 February 1995 at age 19 in pay grade E-1. The record reflects that on 16 February 1995 he disclosed, during a suitability screening for submarine duty, pre-service alcohol and drug usage. During his subsequent substance abuse evaluation, he was found to be alcohol dependent, with physiological dependence, and was recommended for separation.

d. Petitioner was then advised that administrative separation action was being initiated by reasons of erroneous enlistment as evidenced by the diagnosis of alcohol dependence. Petitioner was advised of and waived all procedural rights concerning the proposed separation. On 8 March 1995, Petitioner's enlistment was voided due to erroneous entry for drug abuse with an RE-4 reenlistment code.

e. The DD Form 214 issued on Petitioner's separation has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "ENTERED: 95FEB08. RELEASED: 95MAR08. Enlistment Void. This release does not constitute a discharge and a discharge certificate has not been issued."

f. Federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent. However, the law also requires that the testing and evaluation to determine dependence be conducted within 72 hours after the individual reports to an initial period of active duty. If an individual is separated within 180 days after beginning active duty service, an uncharacterized entry level separation is normally issued.

g. An individual can be separated due to an erroneous enlistment if there is a condition which, had it been known prior to enlistment, would have prevented enlistment. Drug or alcohol dependence are such conditions. Additionally, the applicable regulation requires the assignment of an RE-4 reenlistment code to individuals discharged by reason of "erroneous entry-alcohol abuse."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Petitioner's enlistment could have been voided if he was diagnosed as alcohol dependent within 72 hours of his reporting for active duty. However, since the diagnosis was not arrived at until eight days after his reporting for active duty, the diagnosis of dependence was not accomplished within the time limits prescribed by law for a void enlistment. Therefore, the Board concludes that Petitioner's enlistment was improperly voided. Accordingly, the record should be corrected to show that he received an uncharacterized entry level separation vice a void enlistment. Further, the record reflects that he was separated by reason of erroneous enlistment due to drug abuse when, in fact, he was diagnosed as alcohol dependent. The record should be corrected accordingly.

Concerning the reenlistment code, the Board notes that regulations require the assignment of an RE-4 reenlistment code to an individual separated by reason of erroneous entry due to

alcohol abuse. Accordingly, the Board concludes that the reenlistment code was proper and no change is warranted.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by issuing him a new DD Form 214 which reflects that he served on active duty from 8 February to 8 March 1995 and on the latter date was discharged with an uncharacterized entry level separation by reason of erroneous entry-alcohol abuse, vice the void enlistment by reason of erroneous entry due to drug abuse.

b. That no other 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 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.

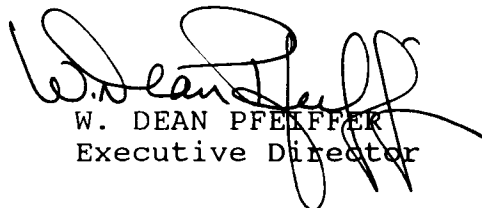
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

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