



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

TRG
Docket No: 1045-02
10 July 2002

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Naval Reserve filed an application with this Board requesting that the reason for her discharge from the Navy be changed to hardship so that she will be eligible to receive Montgomery G.I. Bill (MGIB) benefits.

2. The Board, consisting of Ms. LeBlanc, Ms. Davies and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 9 July 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 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 for four years on 9 September 1991 at age 18. Subsequently, she elected to participate in the MGIB. The administrative separation documentation is not in the record, but the DD Form 214 shows that she was honorably released from active duty on 31 January 1994 due to pregnancy or childbirth. She was assigned a separation program designator (SPD) code of "KDF", which indicates that her separation was voluntary. At that time, she had completed two years, four months and 22 days of active service. Her child was born on 5 June 1994. She began to

participate in the Naval Reserve on 26 June 1995 and was advanced to petty officer third class in 2001.

d. The Board is aware that Petitioner is not eligible for the MGIB because she did not complete 30 months of active duty, and there is no provision in the law that would allow Petitioner's \$1,200 MGIB payment to be refunded to her. However, she would be eligible for payments under the MGIB if she had completed 30 months of active duty and was discharged for the convenience of the government or due to a hardship. Further, she would be eligible for payments based on her 28 months of active duty if her separation was involuntary. As previously noted, the SPD of KDF indicates that her separation was voluntary. Therefore, she is being denied all MGIB benefits. An SPD of JDF would indicate that her separation was involuntary and she would be entitled to 28 months of MGIB benefits.

e. Petitioner states that she was counseled that her discharge would be considered a hardship and she would retain all of her benefits, and she was completely unaware that her early discharge would make her ineligible for MGIB benefits. The Board is aware that if her child had been born while she was on active duty, she probably would not have been able to stand watches or be eligible for shift work or deployments. If this was the case, and she could not sign a dependent care certificate, she would have been involuntarily discharged.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In reaching its decision, the Board notes that pregnancy is not considered a hardship and she was properly separated by reason of pregnancy or childbirth. Although she requested discharge, it appears that had she been properly advised and remained on active duty until the birth of her child, on 5 June 1994, she would be eligible for MGIB benefits because she would have completed over 30 months of active duty and, if she had been unable to provide a valid dependent care certificate, she would have been involuntarily separated. Given the circumstances, including her satisfactory record of service on active duty and the Naval Reserve, the Board concludes that Petitioner's SPD should be changed to JDF so that she can obtain 28 months of MGIB benefits.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in her record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 31 January 1994 she was assigned a Separation Program Designator (SPD) of JDF vice the SPD of KDF now of record.

b. That this Report of Proceedings be filed in 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.



For W. DEAN PFEIFFER
Executive Director