



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

TRG
Docket No: 8322-01
17 October 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, a former enlisted member of the Naval Reserve, filed an application with this Board requesting that her record be corrected to show that she was not discharged on 1 October 2000 but continued to serve in the Naval Reserve. She is also requesting credit for paid drills from February 2001.

2. The Board, consisting of Mr. McBride, Mr. McPartlin and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 8 October 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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Naval Reserve on 29 March 1997 at age 28. She then served without incident for almost three years. On 12 December 1999 she was placed in a not physically qualified status because of cancer. Subsequently, the Bureau of Medicine and Surgery (BUMED) found that she was not physically qualified for retention in the Naval Reserve because of the diagnosis of rhabdomyosarcoma. On 30 May 2000, the Chief of Naval Personnel directed the command to provide her advice as to her options. Accordingly, she was informed by letter of 30 May 2000 that unless she appealed the findings of BUMED within 30 days she would be involuntarily discharged. She was honorably

discharged on 1 October 2000. The reason for discharge is indicated as unsatisfactory drill attendance and not being physically qualified for retention.

d. Petitioner states that she was dropped from a drilling status by the medical department, but due to administrative error she was charged with missing drills and was not informed of the problem because the manpower department of the reserve center did not have her current address. When she discovered the problem she provided the manpower office with her correct mailing address. However, she claims that she never received the notification of the BUMED action and was unable to exercise her right to appeal the decision. Additionally she never received her discharge certificate and was unaware that she had been discharged.

e. Petitioner has submitted evidence showing that after completion of treatment for her cancer, she returned to the reserve center to reaffiliate with a unit. In a 3 February 2001 physical examination it was noted that her cancer was in remission and she was physically qualified for service in the Naval Reserve. However, the doctor noted that the Manual of the Medical Department states that a history of malignant tumor is disqualifying for military service. He noted that she was now physically fit and very enthusiastic to continue her career. It appears that he then requested an additional review to allow her to continue to serve. Petitioner states that on 21 February 2001 she attempted to reaffiliate with a unit, and only then was it discovered that she had been discharged. She believes her discharge was improper in that she was never given an opportunity to submit an appeal of the BUMED decision. There is no evidence that she has been allowed to reenlist since her discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that she was not properly notified of the BUMED finding and was not given an opportunity to appeal that decision. The fact that the doctor found her physically qualified within five months of her discharge suggests that an appeal might have had some chance of success. Given the circumstances, the Board believes that she should be given an opportunity to qualify for further service. Therefore, the Board concludes that the discharge on 1 October 2000 should be cancelled and she should be a member of the Individual Ready Reserve (IRR) from that date. Once she has status, BUMED can consider her qualifications for retention in the Naval Reserve. If she is ultimately found not physically qualified she can be

discharged at that time.

The Board notes her request for drill pay credit from February 2001 when the unit doctor found her physically qualified. However, it appears that since a history of a malignant tumor is disqualifying for service, BUMED must agree that she is physically qualified to serve. Therefore, there is no evidence that she would actually have been allowed to drill beginning in February 2001. The fact that she has not reenlisted suggests that she is still not considered to be physically qualified. Accordingly, the Board defers action on her request for the crediting of paid drills. She can submit another application on this issue if and when she actually returns to a drilling status and evidence is submitted that she would have been allowed to drill beginning in February 2001 if she had not been discharged.

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 circumstances of her case.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that she was not discharged on 1 October 2000 but remained a member of the IRR until a proper determination is made that she is either physically or not physically qualified for retention in the Naval Reserve.
- b. That no action be taken at this time on her request for the crediting of paid drills
- c. 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.

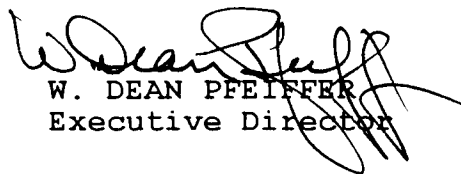
ROBERT D. ZSALMAN
Recorder



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.


W. DEAN PFEIFFER
Executive Director