



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

TJR  
Docket No: 7965-07  
25 June 2008

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552  
(b) OPNAVINST 5350.4C  
(c) BUPERSINST 1900.8B

Encl: (1) DD Form 149 with 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, filed enclosure (1) with this Board requesting that his reenlistment code be changed.
2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 June 2008 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 19 November 1996 at age 18 and began a period of active duty on 29 December 1996.
  - d. During Petitioner's 17 years of honorable service, he was awarded a Navy Unit Commendation, Navy Air Medal, Armed Forces Service Medal, Navy "E" Ribbon, Joint Meritorious Unit

Award, Overseas Service Ribbon, Southeast Asia Service Medal, Joint Meritorious Unit Award with Oak Cluster, two Navy and Marine Corps Achievement Medals, two Letters of Commendation, three Meritorious Unit Commendations, five Good Conduct Medals, two National Defense Service Medals, six Sea Service Deployment Ribbons, and two North Atlantic Treaty Organization (NATO) Medals.

e. Petitioner served his initial enlistment without disciplinary incident. However, in November 1988, he was involved in an alcohol related incident, specifically, driving under the influence of alcohol. As a result, he was assigned to an alcohol rehabilitation program. On 31 January 1989, upon completion of the Level II rehabilitation program, he was assigned to an aftercare treatment program in accordance with reference (b).

f. Petitioner reenlisted in the Navy on 7 May 1993. He also extended his enlistment on four more occasions.

g. On 23 April 2002 Petitioner received nonjudicial punishment (NJP) for driving under the influence of alcohol, an incident which occurred in March 2002. As a result, he was assigned to a Level I alcohol rehabilitation program on an out-patient treatment basis. On 31 May 2002 he completed this program and was assigned to an aftercare program.

h. On 26 June 2002 Petitioner's commanding officer submitted a request for a retention waiver based on Petitioner's superior performance. Subsequently, Petitioner's immediate supervisor, in concurrence with the commanding officer, requested retention of him even though he had incurred two alcohol related incidents during his period of service, and as such should have been administratively processed for separation in accordance with reference (b).

i. On 2 July 2002 the Chief of Naval Personnel (CNP) granted the waiver for retention and Petitioner was retained in the Navy. At this point, CNP stated that no further action with regard to an administrative separation was warranted. CNP further stated, in part, that in the event of Petitioner's subsequent failure to complete additional treatment, or if he is determined not to be amenable to treatment, or if another alcohol related incident occurs, the command should proceed with an administrative separation.

j. It appears that in November 2003 Petitioner's command initiated administrative separation processing in accordance with reference (b). In this regard, Petitioner was separated from the Navy by reason of alcohol rehabilitation failure due to his two alcohol related incidents. The first incident occurred in November 1988 and the second incident occurred in March 2002, approximately 14 years after completion of his Level II rehabilitation program.

k. It further appears that the waiver of retention granted by CNP on 2 July 2002 was not considered during Petitioner's administrative separation processing. In this regard, reference (b) states, in part, that commands shall process for administrative separation all members considered to be treatment failures **'unless a written waiver is obtained'** from CNP.

l. Petitioner's separation enlistment performance evaluation for the period from 16 November 2003 to 20 May 2004 indicates that he was not only promotable, but recommended for retention.

m. On 30 April 2004 the discharge authority, Commanding Officer, Patrol Squadron Thirty (VP-30), directed separation by reason of alcohol rehabilitation failure and assigned of an RE-4 reenlistment code.

n. On 20 May 2004 Petitioner was honorably discharged by reason of alcohol rehabilitation failure. At that time he was recommended for reenlistment, but was assigned an RE-4 reenlistment code as required by reference (c).

o. There is no evidence in the record, and none could be obtained from the military or civilian communities, to support an administrative separation by reason of alcohol rehabilitation failure, specifically, a third alcohol related incident following the waiver of retention.

p. In Petitioner's application and his supporting documentation, he states, in part, that he was not the subject of any alcohol related incidents, military or civilian, after receiving a waiver for retention. Petitioner has also provided documentation of good post service conduct to include medical records that attest to his sobriety, and character reference letters.

q. Reference (c) authorized the issuance of an RE-1 reenlistment code for Sailors who are processed for separation by reason of the best interest of the service (Secretarial Authority). It also authorized an RE-1 reenlistment code for a Sailor, such as Petitioner, who was honorably discharged and recommended for retention.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action.

The Board notes Petitioner's alcohol related incidents, one of which resulted in NJP, and does not condone his misconduct. However, the Board's decision is based on Petitioner's otherwise outstanding record in which he was awarded numerous medals.

The Board believes that Petitioner's discharge was based solely on the two alcohol related incidents that occurred prior to him being granted a waiver for retention by CNP. The Board further believes that Petitioner was erroneously separated by reason of alcohol rehabilitation failure since by reference (b), another (a third) alcohol incident after being granted the waiver would have been cause for an administrative separation. In this regard, neither Petitioner's record, the Bureau, nor Petitioner's last command (VP-30) has evidence of such an incident. Furthermore, evidence of a third alcohol related incident could not be obtained from the civilian community.

The Board also notes that although Petitioner was processed for separation due to alcohol rehabilitation failure, and assigned an RE-4 reenlistment code, he was recommended for retention by both his immediate supervisor and commanding officer. In this regard, the Board believes that the command's 'hands were tied' by the guidelines of reference (b) and was obligated to assign an RE-4 reenlistment code.

In view of the above, the Board concludes that Petitioner's narrative reason for separation should be appropriately changed to Secretarial Authority, which is in the best interest of the service. The Board further concludes that an RE-1 reenlistment code is now the most appropriate code for Petitioner's situation, and that the record should be corrected accordingly.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of Secretarial Authority on 20 May 2004 vice by reason of alcohol rehabilitation failure.

b. That Petitioner's naval record be further corrected to show that he was assigned an RE-1 reenlistment code on 20 May 2004 vice the RE-4 reenlistment code actually assigned on that date.

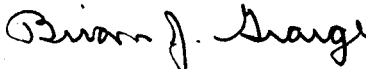
c. That Petitioner's naval record reflect that when he becomes retirement eligible, that the separation payment he received upon his discharge of 20 May 2004 in the amount of \$29,024.80 will become recoupable by the Defense Finance and Accounting Service (DFAS). Petitioner's naval record should further reflect that he was advised of this DFAS recoupment requirement on 24 June 2008.

d. 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.


e. 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 purposes, with no cross references 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

  
BRIAN J. GEORGE  
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 Regulation, 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