



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

BAN
Docket No: 06397-08
6 July 2009

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

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 25 June 2009 w/attachments
(2) DD Form 214 dtd 27 May 05
(3) Commander, Naval Personnel Command message dtd 161400Z May 2005
(4) FBI Identification Record
(5) Office of the Clerk of Court, Parish of Orleans, Criminal District Court Docket Master dtd 13 Mar 09

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by showing he completed and retired after 20 years of active duty service.

2. The Board, consisting of Ms. [REDACTED] and Messrs [REDACTED] and [REDACTED] considered Petitioner's allegations of error and injustice on 25 March 2009. Pursuant to its regulations, the Board determined that relief should be granted. 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. On 21 July 1986, Petitioner enlisted in the Navy and served without disciplinary action until 13 June 1989, when he was convicted of driving under the influence (DUI) of alcohol. Then, on 18 May 1997, Petitioner was convicted in civil court of domestic violence and criminal trespassing. On 21 March 2001, he was again arrested and convicted in civil court of domestic violence, and bodily injury to

his spouse. Furthermore, Petitioner was again arrested on 23 July 2004, for DUI and possession of an illegal substance (marijuana) in his vehicle.

d. Petitioner was processed for administrative separation due to his second DUI (alcohol rehabilitation failure). He requested an administrative discharge board (ADB). In 2005, an ADB was held and found misconduct, but they voted to retain him due to his exemplary military service for 18 years. It is important to note that Petitioner was never prosecuted by civil or military authorities for drug possession. Petitioner never tested positive for drug use and the district attorney refused to prosecute the case for drug possession. However, after the ADB voted to retain Petitioner, his commanding officer, in his endorsement letter, stated that he disagreed with the ADB's decision to the retain him and recommended separation with a general discharge. The case was then forwarded to the Naval Personnel Command where separation was ultimately approved by the office of the Secretary of the Navy.

e. In June 2008, Petitioner submitted a request to this Board requesting that his retirement with 20 years of service be approved. Petitioner believes that the punishment was unjustly harsh due to the fact that the time between his first and second DUI was over 15 years, (although, MILPERSMAN 1910-152 states, "Any member who returns to alcohol abuse at any time during member's career following treatment" is deemed to be an alcohol rehabilitation failure). Additionally, Petitioner believes that the loss of his retirement over the course of 40 years, at the retirement grade of E-7, until the age of 75, would be approximately \$1,000,000.00, and is disproportionate to his offense.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board finds that he had over 18 years of exemplary service. The Board also relies on the fact that his ADB found misconduct, but recommended that he be retained on active duty. Finally, the Board notes that he was not convicted of the marijuana possession charge. The Board believes there was sufficient compelling evidence to establish that Petitioner should have been allowed to finish his enlistment and retire after 20 years of military service.

In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

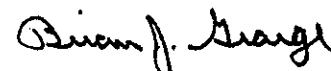
a. That Petitioner's naval record be corrected show that he retired after 20 years of active duty service on 1 August 2006, with all rights and benefits of a retiree.

b. That any material or entries relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries be added to the record in the future.

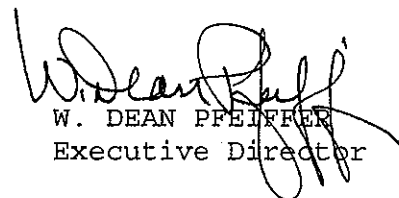
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

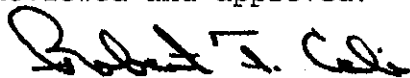
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:


7-14-08

ROBERT T CALI
Assistant General Counsel
(Manpower and Reserve Affairs)