



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

TRG

Docket No: 8278-08
19 November 2008

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 commissioned officer in the Navy Reserve, filed an application with this Board requesting that his record be corrected to show that he reverted to enlisted status and transferred to the Fleet Reserve vice accepting a commission in the reserve component.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 November 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. Petitioner's application was filed in a timely manner.

c. Petitioner was honorably discharged on 17 May 2003 for the purpose of accepting a commission as a nurse. At that time, he had advanced to petty officer first class (AG1; E-6) and had completed 15 years, 9 months and 14 days of active service.

d. Petitioner then served in an excellent manner as a Nurse for over five years. Because of family issues he then requested reversion to enlisted status and transfer to the Fleet Reserve. However, he was honorably discharged on 30 June 2008 with over 20 years of active service. On 1 July 2008 he accepted a commission as a reserve officer in the Nurse Corps.

e. Attached to enclosure (1) is an advisory opinion from

the Navy Personnel Command which states, in part, as follows:

...in the weeks before his retirement date in June 2008, he was evidentially [sic] misinformed regarding his eligibility to be an active member of the Navy Reserve. Records show that he was issued a Navy Reserve appointment which he accepted on 18 May 2008 to become effective on 1 July 2008.

...Per the provisions of reference (b) [10 USC 12731], members who are entitled to regular retired or retainer pay are no longer eligible for non-regular retired pay on or after age 60. Their entitlements remain permanently fixed to their previous computed retired pay no matter of what level of reserve participation or promotion is achieved. For this reason, participation in the Navy Reserve program is not allowed. ...

...We strongly recommend that his petition be quickly acted upon to allow back-payment of Fleet Reserve retirement pay, and closure of his current situation. Correcting the record to reflect transfer to the Fleet Reserve will allow these things to happen, so that he can get on with his life...

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. It is clear that if he had been properly advised that he would not have accepted a commission in the Navy Reserve but would have allowed his approved transfer to the Fleet Reserve to have occurred. Therefore, the Board agrees with the recommendation contained in the advisory opinion that his record should be corrected to show that he was not commissioned in the Navy Reserve but reverted to enlisted status and transferred to the Fleet Reserve on 30 June 2008.

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 his Navy status.

RECOMMENDATION:

- a. That Petitioner's Naval Record be corrected to show that he was not commissioned in the Navy Reserve on 1 July 2008.
- b. That Petitioner's record be further corrected to show that he reverted to enlisted status and then transferred to the Fleet

Reserve on 30 June 2008.

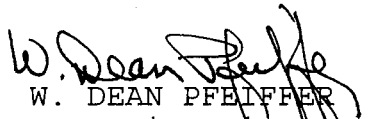
c. That this Report of Proceedings be filed in Petitioner's naval record.

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


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 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