



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

SMS
Docket No: 8335-08
21 May 2009

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, applied to this Board requesting an honorable characterization of service, RE-1 reenlistment code, and to change the reason for separation vice the general discharge by reason of misconduct due to a serious offense and RE-4 reenlistment code that was issued on 7 July 2000.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 May 2009, 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. On 14 August 1997, Petitioner enlisted in the Navy at age 20. On 3 May 1999, he reported for duty to Bahrain. On 30 April 2000, his parents notified the commanding officer that his wife was causing indebtedness by draining the bank account for drugs and alcohol, and that his children were in an abusive situation. His parents further stated that a lawyer was retained and he was filing for custody of the children and

divorce. On 1 June 2000, he had nonjudicial punishment (NJP) for failure to obey a lawful order by not returning from curfew on time, assault, nine instances of uttering checks without sufficient funds, failure to pay a debt, and disorderly conduct.

c. Based on the information currently contained in the record, it appears that Petitioner's commanding officer subsequently initiated administrative separation by reason of misconduct due to a serious offense, and recommended a general discharge. In connection with this processing, he would have acknowledged the separation action. On 7 July 2000, he was separated with a general discharge by reason of misconduct due to a serious offense. At that time his overall trait average was 3.0.

d. In his application, Petitioner states that he was discharged as a result of an ongoing situation with his ex-wife and the well-being of his children. He further states that the situation has since been resolved and he is actively pursuing reenlistment in the Navy. He also provided an additional statement regarding the NJP in which he states that the offenses regarding insufficient funds and failure to pay a debt resulted from his ex-wife depleting his account and the remaining offenses resulted from an incident at a civilian establishment with a patron who intruded in his personal conversation which resulted in a heated situation.

e. With Petitioner's application, he provided a civilian court order showing that he was granted a temporary injunction for protection against domestic violence and awarded custody of his children on 11 August 2000. He also provided a petition for dissolution of marriage and other relief dated 14 August 2000, that was filed in civilian court listing the same issues previously addressed by his parents before he had NJP. He also provided a letter dated 18 June 2008, from the Commanding Officer of the Sea Air Land (SEAL) Delivery Vehicle Team TWO recommending approval of his requests and states that he will be considered for assignment to SEAL training if he is eligible for reenlistment.

f. Regulations authorize issuance of a general discharge for members separated by reason of misconduct and direct assignment of an RE-4 reenlistment code in such cases. Regulations also authorize issuance of an honorable discharge for members separated by reason of Secretarial authority and authorize assignment of an RE-1 reenlistment code in such cases.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's requests warrants relief. Specifically, the Board finds that his separation met the requirements established by regulations but considers the evidence submitted mitigating. In this regard, a civilian court order granted him custody of his children and a petition for divorce occurred less than two months after he was discharged based on the same issues that his commanding officer was made aware of before he had NJP and was administratively discharged for misconduct. The Board further considers his overall service record and finds that with the exception of one NJP, he had no other disciplinary actions, and further finds that sufficient evidence was provided to support his explanation of events surrounding his offenses for which he had NJP. The Board also considers the Commanding Officer of SEAL Delivery Vehicle Team TWO's strong recommendation for approval. Therefore, as a matter of clemency, the Board concludes that Petitioner's record should be corrected to show that he was honorably discharged by reason of Secretarial authority and assigned an RE-1 reenlistment code on 7 July 2000.

RECOMMENDATION:

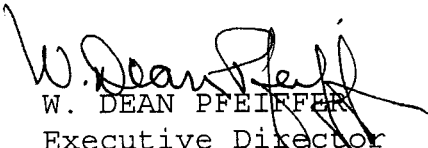
- a. That Petitioner's naval record be corrected to show that he was honorably discharged by reason of Secretarial authority and assigned an RE-1 reenlistment code on 7 July 2000, vice the general discharge by reason of misconduct due to a serious offense and RE-4 actually assigned on that date.
- b. 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.
- 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 purposes, with no cross reference being made a part of Petitioner's naval record.
- d. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 28 August 2008.

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