



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

TJR  
Docket No: 10728-08  
10 July 2009

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

Encl: (1) Case summary  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed an application with this Board requesting that his RE-4 reenlistment code be changed.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 7 July 2009 and, pursuant to its regulations, a majority 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 Navy on 31 March 1999 for four years at the age of 19. At this time he also extended his enlistment for 12 months and began a period of active duty on 27 April 1999.

d. Although the record is incomplete, it appears, as evidenced by entries on his Awards page (NAVPERS 1070/604 (Page 4)) that Petitioner was not awarded a Good Conduct Medal, which

could be due to low performance evaluation marks or unrecorded minor disciplinary infractions. However, during his enlistment he was awarded three Sea Service Deployment Ribbons, three Overseas Service Ribbons, an Armed Forces Expeditionary Medal, a Meritorious Unit Commendation, and a National Defense Service Medal.

e. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) reflects that on 16 June 2002 he was promoted to aviation ordnanceman third class (AO3/paygrade E-4). His DD Form 214 further reflects that in September 2003 he completed and passed the examination for aviation ordnanceman second class (AO2/paygrade E-5).

f. On 26 April 2004 Petitioner was honorably released from active duty and transferred to the Navy Reserve upon completion of his required active service. At that time he was assigned an RE-4 reenlistment code. Petitioner acknowledged the information contained on and initialed the DD Form 214 that was issued to him upon separation. His record does not include a page 13 entry explaining why he was not recommended for reenlistment.

g. On 30 March 2007 Petitioner was honorably discharged at the expiration of his enlistment. If issued a Record of Discharge from the U.S. Naval Reserve (Inactive), NAVPERS 1070/615, it would reflect that he was not recommended for reenlistment in accordance with the RE-4 reenlistment code assigned on 26 April 2004.

h. In his application, Petitioner asserts that not only did he honorably serve in the Navy without disciplinary infraction or lost time, but he also received a Good Conduct Medal and was "asked" to reenlist, but chose not to do so. He further asserts that although his copies of his performance evaluations were destroyed or sold, they were satisfactory.

#### MAJORITY CONCLUSION:

Upon review and consideration of the evidence of record, although incomplete, a majority of the Board, consisting of Messrs. Dunn and Pfeiffer, concludes that Petitioner's request warrants favorable action.

Although the record is incomplete, the majority's recommendation is based on Petitioner's otherwise satisfactory conduct, which resulted in an honorable characterization of service at the time of his release from active duty. In reaching its decision the

majority believes that the assignment of an RE-4 reenlistment code is not supported since Petitioner passed his advancement examination. Taking all of the foregoing into consideration, the majority does not believe that Petitioner's record, such as it is, justifies the assignment of an RE-4 reenlistment code. Accordingly, the majority concludes that an RE-1 reenlistment code should now be assigned.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued an RE-1 reenlistment code on 26 April 2004 vice the RE-4 reenlistment code actually issued on that same day.

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 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.

MINORITY CONCLUSION:

Mr. Delorier disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. In this regard, the minority member notes Petitioner's assertions of serving without disciplinary infraction and receiving a Good Conduct Medal, but concludes that the record, although incomplete, appears to be contrary to his assertions.

The minority member is aware of the favorable aspects of Petitioner's service, however, he believes that even though Petitioner passed an advancement examination, he was not recommended for advancement, and by his own words "chose not to reenlist" at the lower paygrade. Further, the minority believes that if Petitioner were recommended for reenlistment when he was released from active duty in April 2004, he would have had concerns regarding the RE-4 reenlistment code which bars reenlistment based on the recommendation of his commanding officer and would not have initialed his DD Form 214.

Although Petitioner's record is incomplete, i.e., no performance evaluations are on file, the onus is on him to prove the existence of probable material error or injustice. In this regard, he was provided with copies of his performance evaluations and these evaluations were discussed in detailed with him. Nonetheless, Petitioner did not or could not provide copies of the performance evaluations. With that being said, the minority presumes regularity attaches to all official records, and since Petitioner has not clearly shown an error or injustice in the assignment of the RE-4 reenlistment code, the minority believes that he was informed that he was not recommended for retention, advancement, or reenlistment at the time of his release from active duty.

The minority member believes that the RE-4 reenlistment code was properly assigned and should not be changed based solely on Petitioner's assertions.

In view of the foregoing, the minority finds no injustice warranting corrective action.

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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.

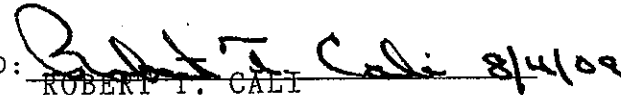
ROBERT D. ZSALMAN  
Recorder

  
BRIAN J. GEORGE  
Acting Recorder

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

  
W. DEAN PFEIFFER

MAJORITY REPORT APPROVED: \_\_\_\_\_

  
ROBERT I. CALI 8/4/09  
Assistant General Counsel  
(Manpower and Reserve Affairs)

MINORITY REPORT APPROVED: \_\_\_\_\_