



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

BJG
Docket No: 12113-08
16 September 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 19 Nov 08 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by changing his RE-4 (not recommended) reenlistment code, which was assigned on 6 September 2004, to an RE-1 (recommended).

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 August 2009. Pursuant to its regulations, the majority, Mr. J. Hicks and Ms. McCormick, determined that the corrective action indicated below should be taken on the available evidence of record. The minority, Mr. Washington, recommended that Petitioner's request be denied. 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. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner entered active duty in the Navy on 7 September 2000. He received nonjudicial punishment (NJP) on 8 April 2004 for failure to obey an order or regulation. His evaluation report ending on 15 June 2004 noted his NJP, but recommended him for retention. His final evaluation report ending on 6 September 2004 also recommended him for retention. He was honorably discharged as a BM3 (pay grade E-4) and transferred to the Navy Reserve on 6 September 2004, and was assigned an RE-4 reenlistment code. On 22 August 2008, he was honorably discharged from the Navy Reserve, and recommended for reenlistment.

d. Petitioner's senior rater, an ensign (pay grade O-1), consistently recommended him for retention. Petitioner's commanding officer, a lieutenant (pay grade O-3), assigned him the RE-4 reenlistment.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority finds an injustice warranting full relief. The majority notes that Petitioner had only one NJP for a minor infraction in a four year enlistment, and was serving in pay grade E-4. The majority also notes that his senior rater consistently recommended him for retention, and that he was recommended for reenlistment when he was discharged from the Navy Reserve. The majority concludes that an RE-4 reenlistment code no longer serves a useful purpose, and that his record should be corrected to show his was issued an RE-1. In view of the foregoing, the majority recommends the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 6 September 2004, he was issued an RE-1 reenlistment code, vice the RE-4 actually issued that date.

b. That any material or entries 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 purpose, with no cross reference being made a part of Petitioner's naval record.

MINORITY CONCLUSION:

The minority finds that no relief is warranted. He notes that although Petitioner's immediate rater recommended retention, even after his NJP, the commanding officer, a more seasoned lieutenant, is the individual who assigned the reenlistment code. The minority concludes that the RE-4 reenlistment code was correctly assigned.

MINORITY RECOMMENDATION:

a. That Petitioner's application be denied.

5. 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
BRIAN J. GEORGE
Acting Recorder

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

W. Dean Pfeiffer
W. DEAN PFEIFFER

MAJORITY REPORT

Reviewed and approved:

Robert T. Call
9-24-09

MINORITY REPORT

Reviewed and approved:

Robert T. Call
Assistant General Counsel
(Manpower and Reserve Affairs)