



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

TRG
Docket No: 1352-09
12 March 2009

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

Subj: REVIEW OF NAVAL RECORD OF EX [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 former commissioned officer, filed an application with this Board requesting that his record be corrected to show that he retired instead of being discharged on 1 October 2006 with separation pay.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 March 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. Petitioner's application was filed in a timely manner.

c. Attached to enclosure (1) is a letter from the Navy Personnel Command (NPC) which states, in part, as follows:

...We note that prior to your separation from active duty in 2006, you were denied the opportunity to augment to [sic] Regular Navy. This prompted your involuntary release from active duty on 1 October 2006, which resulted in your receiving involuntary separation pay of \$161,075.42. Since you were credited with more than 24 years of active duty at that time, you should not have been Involuntarily Released from Active Duty (IRAD). You should have been honorably discharged, allowed to immediately re-enlist in your former rate as

an E-5, and transferred to the Fleet Reserve as an enlisted member, since you had not served the minimum 10 years of active commissioned service required...

...As a Fleet Reservist, you would have started receiving monthly retired pay and medical benefits effective 1 October 2006. In 2011, upon reaching 30 years of total military service, you would become eligible for transfer to Retired Reserve[sic] status and continue receiving retired pay as a Navy Lieutenant [sic]. Regrettably, due to errors made at the time of your separation from active duty, this proper course of action did not take place...

d. The NPC letter recommended that this Board correct the record to show that Petitioner was honorably discharged from commissioned status on 30 September 2006 and immediately reenlisted on 1 October 2006 in his previous rate vice being involuntarily released from active duty. The record should then be corrected to show that on 1 October 2006 he transferred to the Fleet Reserve in the highest enlisted rate held. It was also recommended that ... "a fair recoupment plan be formulated by DFAS [Defense Finance and Accounting Service] for the recoupment of the \$161,075.42 received in 2006 as involuntary separation pay."...

CONCLUSION:

Upon review and consideration of all the evidence of record and especially the comments contained in the advisory opinion, the Board concludes that Petitioner's request warrants favorable action. Therefore, his record should be corrected to show that he was honorably discharged from commissioned status on 30 September 2006. The record should then be corrected to show that he reenlisted in the Navy on 1 October 2006 for the minimum period of two years and transferred to the Fleet Reserve in the highest enlisted grade held that same day.

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 reasons for the change in his status from discharged to retired.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was honorably discharged from commissioned status on 30 September 2006.
- b. That his record be further corrected to show that he enlisted

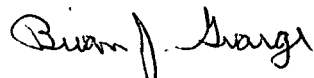
in the Navy on 1 October 2006 and transferred to the Fleet Reserve that same day.

c. That the grade on transfer to the Fleet Reserve be as determined by NPC.

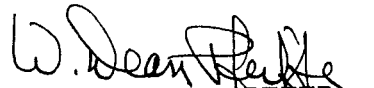
d. That this Report of Proceedings be filed in Petitioner's naval record.

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