



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

TJR
Docket No: 2256-09
25 January 2010

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) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

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

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 January 2010 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. 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 enlisted in the Navy on 16 August 1991 at age 19 and began a period of active duty on 21 January 1992. On 16 August 1993 Petitioner was advanced to paygrade E-3.

d. It appears, as reflected on an Enlisted Performance (Page 9) entry, that Petitioner served without disciplinary incident

until 27 April 1994, when he received nonjudicial punishment (NJP). However, the record does not reflect the offenses for which NJP was imposed or its punishment.

e. There is no indication in the record that Petitioner had any other problems. Furthermore, his record does not contain any performance evaluations.

f. On 20 January 1996, Petitioner, while serving in paygrade E-3, was honorably released from active duty at the expiration of his enlistment, and assigned an RE-4 reenlistment code. On 15 August 1999 he was honorably discharged from the Navy Reserve upon completion of his required obligated service.

g. The applicable regulation in effect at the time of Petitioner's separation authorized the issuance of an RE-3R reenlistment code to a Sailor who failed to meet the professional growth criteria during his first enlistment. Such criteria included advancement to paygrade E-4, or passing an examination for such advancement. In order to receive an RE-3R reenlistment code, a Sailor must be recommended for advancement or be promotable. A Sailor separated upon the expiration of enlistment may also receive an RE-4 reenlistment code, which means that he or she is not recommended for reenlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board initially notes that Petitioner's disciplinary infraction resulting in NJP occurred more than two years prior to his honorable release from active duty. The Board also takes into account Petitioner's record, which reflects honorable service and the lack of documentation specifying why he was not recommended for retention, advancement, or reenlistment. The Board therefore concludes that the assigned RE-4 reenlistment code is unjust because an RE-3R reenlistment code is authorized by regulatory guidance and may be assigned to Sailors who are honorably released from active duty, while serving in paygrade E-3. Concerning the assigned RE-4 reenlistment code, there does not appear to be any documentation in the record to support such a nonrecommendation. Accordingly, the Board concludes that Petitioner's record, while not totally exemplary, does not warrant the most stigmatizing reenlistment code of RE-4 which should be changed to an RE-3R.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the RE-4 reenlistment code, assigned on 20 January 1996, to RE-3R.

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.

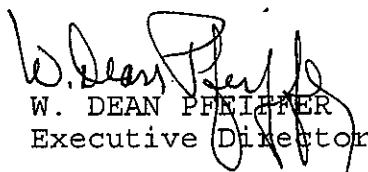
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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 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