



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

BJG
Docket No: 3150-14
3 June 2014

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 6 Jan 14 w/attachments

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by changing his general characterization of service issued on 17 September 2010 to honorable, as well as his separation authority (Military Personnel Manual (MILPERSMAN) 1910-146 (Misconduct)), separation code of "GKK" (Drug Use), and narrative reason for separation (Misconduct (Drug Abuse)). He further requested that the reduction in rank from pay grade E-6 to E-5 be restored and forfeitures he was sentenced to at his special court-martial (SPCM) be reimbursed. He also requested retirement in the pay grade of E-6. Finally, by implication, he requested removal of all documentation regarding his SPCM conviction and administrative discharge, including an adverse evaluation report for 26 May to 17 September 2010.

2. The Board, consisting of Mses. Bianchi and Montgomery and Mr. Marquez, considered Petitioner's allegations of error and injustice on 28 May 2014, and pursuant to its regulations, recommended corrective action. 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. Petitioner entered active duty in the Navy on 17 February 1991. He served without disciplinary action and was promoted to the rank of petty officer first class (pay grade E-3), until 12 March 2010, when he was convicted by SPCM, contrary to his plea, of the wrongful use of cocaine. He was sentenced to a reduction in pay grade from E-6 to E-5, forfeiture of \$1,949.00 a month for three months, and 90 days of confinement. He was then notified that he was being administratively processed for separation due to misconduct (drug abuse). He elected to have his case heard by an administrative discharge board (ADB). The ADB found he committed misconduct (drug abuse), however, a majority recommended retention. The case was forwarded to the separation authority, who decided to separate him with a general characterization of service due to misconduct (drug abuse). He was so discharged on 17 September 2010, assigned an RE-4 (not recommended for retention) reentry code, and given an adverse evaluation report. He had 19 years and six months of active duty service.

c. On 30 April 2013, the United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) set aside and dismissed the finding of guilt in Petitioner's SPCM based on a violation of his Sixth Amendment right to confrontation at the trial level. All rights, privileges, and property of which he had been deprived by virtue of the finding of guilt and the sentence will be restored.

d. Current service limitations require that a Sailor serving in pay grade E-6 retire with 20 years of service. NBD is the separation code and RE-2 is the reentry code for retirement.

CONCLUSION:


Upon review and consideration of all the evidence of record, and especially in light of the NMCCA set aside and dismissal of the charge Petitioner was convicted of at his SPCM, the Board finds an injustice warranting relief. The Board finds that his characterization of service should be upgraded from general under honorable conditions to fully honorable, since his administrative discharge was based solely on his SPCM conviction. The Board further concludes that his reason for separation, misconduct, should be changed to retirement, and that his adverse fitness report based on his administrative separation should be removed. Moreover, he should be reimbursed

for the forfeiture of pay he was sentenced to, and he should be restored to pay grade E-6. Finally, in light of the fact that he was administratively separated due to his SPCM conviction, he should be given credit with pay for the time he needs to retire in light of the 20 year service limitation for an E-6. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 17 March 2011, he was issued a type of separation of retirement, an honorable characterization of service, a separation authority of MILPERSMAN, a separation code of NDB, an RE-2 reentry code, and a narrative reason for separation of "Retirement". It is directed that his Certificate of Release or Discharge from Active Duty (DD Form 214) be removed and a new one be issued.

b. That Petitioner's record be corrected further by removing the following fitness report and related material:

Date of Rept	Reporting Senior	Period of Report	
		From	To
17 Sep 10		26 May 10	17 Sep 10

c. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of Federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

d. That Petitioner's \$5,847.00 forfeiture of pay from his SPCM sentence be reimbursed and the conviction documentation be removed.


e. That Petitioner receive paid, constructive service for six months of active duty service, to make him eligible for a 20 year retirement in the rank of petty officer first class (pay grade E-6).

f. 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.

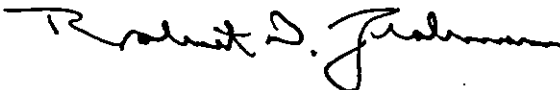
g. That any material to be directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.



ROBERT D. ZSALMAN
Acting Executive Director