



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

SJN

Docket No: 3314-14

18 September 2014

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

Subj: REVIEW OF 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 Reserve, filed enclosure (1) with this Board requesting that his discharge of 8 November 2013, be removed from his Official Military Personnel File (OMPF), and that he be reinstated in the Individual Ready Reserve.

2. The Board, consisting of Mr. Dixit, Mr. Spain, and Mr. Clemmons, reviewed Petitioner's allegations of error and injustice on 16 September 2014 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, and advisory opinion from the Commander, Navy Reserve Forces Command.

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 enlisted in the Navy and began a period of active duty on 29 September 1995. During his service, he was advanced to petty officer second class (SH2; paygrade E-5). On 27 March 2000, he received nonjudicial punishment (NJP) for assault. He had no further disciplinary action and was honorably discharged on 28 September 2009 after 14 years of service. At that time, he was recommended for reenlistment. However, he was

assigned an RE-6 (Ineligible or denied reenlistment due to High Year Tenure) reentry code. Although his record is incomplete, it appears he joined the Navy Reserve, and served without incident for over four years until 8 January 2013, when administrative discharge action was initiated by reason of physical fitness assessment (PFA) failure. He elected to consult with counsel, and on 27 January 2013, he requested to have his case heard by an administrative discharge board (ADB). However, it appears that an ADB was not convened, and his commanding officer (CO) allowed him to remain in the Individual Ready Reserve until the completion of his obligated service. He was honorably discharged on 8 November 2013. At that time, he was not recommended for reenlistment.

c. With his application, Petitioner states, in part, that his command did not convene an ADB, and if given the opportunity, he would have been able to explain that he did not fail any PFA's. He believes he should have been allowed to complete his obligation in the Individual Ready Reserve in order to earn the opportunity to retire.

d. Although Petitioner was notified that he was being administratively separated from the Navy Reserve due to PFA failures, it is not a right to appear before an ADB, and his CO had the authority to allow him to serve until the end of his obligated service.

CONCLUSION:

Upon review and consideration of all the evidence of record, especially the fact that he was notified and elected to appear before an ADB, and has over 18 years of service, the Board concludes that Petitioner's request warrants favorable action in the form of relief. The Board particularly notes that since he had over 18 years of service, he was in the sanctuary zone and should have been allowed to complete 20 years of service and retire. After careful and conscientious consideration of the entire record, the Board concludes that Petitioner's discharge of 8 November 2013, should be removed from his OMPF, and that he be reinstated in the Individual Ready Reserve in order to allow him the opportunity to earn the time needed for retirement.

RECOMMENDATION:


a. That Petitioner's administrative discharge of 8 November 2013, and all other documentation related to it, be removed from his OMPF.

b. That Petitioner be reinstated in the Individual Ready Reserve to allow him to complete 20 years of service and retire.

c. 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.

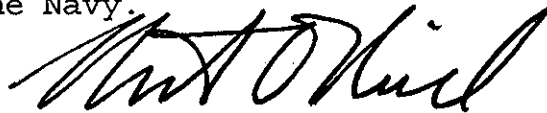
d. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. 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.



BRIAN J. GEORGE
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.



ROBERT J. O'NEILL
Executive Director