



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1830-99

13 August 1999

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 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that his reenlistment code be changed.

2. The Board, consisting of Mr. Pfeiffer, Ms. Gilbert, and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 11 August 1999, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 26 March 1998 for four years at age 18. At an unknown date while in recruit training, Petitioner was evaluated for substance abuse and dependency. During the interview, Petitioner reported that he

had used alcohol two to three times per week since 8th or 9th grade. His first use of alcohol was at age 12 and last use was on 25 March 1998. He also stated he would drink beer to get over a "hangover", used larger amounts over longer periods than intended, and was unsuccessful in controlling his use of alcohol.

d. On 8 May 1998, Petitioner was informed that he had been found to be drug/alcohol dependent and was not eligible for level III inpatient treatment. Thereafter, he was notified that administrative separation was being considered by reason of defective enlistment and induction due to erroneous enlistment as evidenced by a medical evaluation of alcohol dependence and an anti-social personality disorder. However, available records contain no psychiatric evaluation diagnosing a personality disorder. Petitioner was advised of his procedural rights, declined to consult with counsel, and waived the right to have his case reviewed by the general court-martial convening authority.

e. On 11 May 1998, the discharge authority directed that Petitioner's enlistment be voided and he was so separated by reason of "erroneous enlistment-alcohol abuse" on 14 May 1998. At that time, he was not recommended for reenlistment and was assigned an RE-4 reenlistment code.

f. The DD Form 214 issued on Petitioner's separation has all zeros entered in the record of service section (block 12). It states in the remarks section (block 18) "Entered: 98MAR26 Released: 98MAY14. Enlistment Void. This release does not constitute a discharge and a discharge certificate has not been issued."

g. The Board is aware that Federal law requires that an enlistment be voided if an individual is determined to be drug or alcohol dependent. However, the law requires that the testing and evaluation to determine dependence be conducted within 72 hours of reporting to the initial period of active duty. If an individual's enlistment is not voided, but separated within 180 days of beginning active service, an uncharacterized entry level separation is normally issued.

h. The Board is also aware that an individual can be separated due to an erroneous enlistment if there is a condition

which, had it been known prior to enlistment, would have prevented enlistment. Alcohol dependence is such a condition. The regulation requires the assignment of an RE-4 reenlistment code to individuals discharged by reason of "erroneous enlistment-alcohol abuse."

i. Petitioner states that he did not erroneously enlist nor does he have an alcohol problem. He states that he wanted to be discharged and alleges the psychologist told him that if he said he had a drinking problem he could be discharged quickly.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. The Board believes that Petitioner's enlistment could properly have been voided if the diagnosis of alcohol dependence had been made within 72 hours, as required by law. Whether or not Petitioner was so diagnosed cannot be absolutely determined from the dependency screening evaluation filed in the record because it is undated. However, since Petitioner was not informed that he was found to be alcohol dependent until 42 days after his enlistment, the Board does not believe that the diagnosis of dependence was within the time limits prescribed by law. Therefore, the Board concludes that Petitioner's enlistment was inappropriately voided, and that the record should be corrected to show that he was separated with an uncharacterized entry level separation by reason of erroneous enlistment. The DD Form 214 should also be corrected to show the appropriate dates and computation of service in block 12, and the remarks regarding the void enlistment in block 18 should be removed.

Concerning the reenlistment code, the Board notes that regulations require the assignment of an RE-4 reenlistment code when an individual is separated by reason of erroneous enlistment due to alcohol abuse. The Board also notes Petitioner claims he lied about a drinking problem in order to get discharged. Providing false information in order to be discharged is tantamount to fraud. The Board is not sympathetic to individuals who obtain discharges through fraudulent means. Further, the Board has no way of determining what his true statement is, the one he is making now, or the statements he

made to extricate himself from his military commitment. It is well established in law that an individual who perpetrates fraud in order to be discharged should not benefit from the fraud when it is later discovered. Accordingly, the Board concluded that the reenlistment code was proper and no change is warranted.

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 issuing him a new DD Form 214 which reflects that he served on active duty from 26 March 1998 to 14 May 1998 and on the latter date he received an uncharacterized entry level separation by reason of erroneous enlistment.

b. That no other relief be granted.

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 the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross references 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



ALAN E. GOLDSMITH
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