



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

TRG
Docket No: 2813-00
7 February 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN,

Ref: (a) Title 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 filed enclosure (1) with this Board requesting recharacterization of his discharge to honorable and changes in the reason for discharge and reenlistment code. In the alternative, he requests that his record be corrected to show a period of constructive service and transfer to the Fleet Reserve Authority under the provisions of the Temporary Early Retirement Authority (TERA).

2. The Board, consisting of Mr. Zsalman, Mr. Rothlein and Ms. Hardbower, reviewed Petitioner's allegations of error and injustice on 30 January 2001 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 reenlisted in the Navy on 16 March 1995 for four years. The record shows that Petitioner continued to perform his duties in an excellent to outstanding manner. However, during the period 19 October 1995 to 9 October 1997 he filed to meet the body fat standards on three occasions. On 9 October 1997 his body fat was 32%, which is considered to be obese. Although he passed the physical fitness portion of this test, he was a physical readiness test (PRT) failure due to obesity.

d. Since Petitioner had accumulated three PRT failures within four years, he was processed for an administrative discharge. In connection with this processing, he was advised by letter of 31 October 1997, that he could elect or waive his right to an administrative discharge board (ADB) and that he could consult with counsel. By return endorsement, dated 1 November 1997, he waived his right to an ADB. He did not consult with counsel. On 3 November 1997 the commanding officer directed discharge by reason of weight control failure. On 12 January 1998 he was issued a general discharge and was paid separation pay in the amount of \$17,611.43. At that time, he was assigned an RE-3T reenlistment code. On the date of discharge, he had completed 14 years, 8 months and 10 days of active service.

e. Petitioner contends that there was no lawyer attached to his ship with whom he could consult and he received no advice concerning his right to request an ADB, and the ship's legal officer caused him to waive his rights. He contends that an ADB would have delayed his discharge and would have given him an opportunity to present a case for retention in the Navy. He points out that although he did not meet the weight standards, he passed the physical fitness portion of the PRT with a score of outstanding.

f. The Board is aware that during the FY 1998 and 1999 TERA programs, individuals serving in the rate of HT1 (E-6) such as Petitioner were eligible to request early retirement.

CONCLUSION:

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

The Board notes Petitioner's excellent performance of duty and that his failure of the weight standards was mitigated by the fact that he was outstanding on the physical fitness portion of the last PRT.

The Board also believes that although Petitioner's waiver of rights was not legally invalid, he may not have fully understood the importance of requesting an ADB. Given the circumstances, the Board concludes that, in retrospect, Petitioner should have been retained on active duty and provided with an opportunity to retire under TERA. Concerning the characterization of service, the Board notes that the only adverse evaluation marks he received were caused by his failure to meet the weight standards and his conduct and performance of duty were excellent. Therefore, the Board concludes that the characterization of service on transfer to the Fleet Reserve should be honorable.

Accordingly, Petitioner's record should be corrected to show that he was not discharged on 12 January 1998, but continued to serve

on active duty until the earliest possible date he could transfer to the Fleet Reserve under TERA with 15 years of active service. This date is believed to be 1 June 1998 but the actual date will be computed by the Navy Personnel Command. The characterization of his service on transfer should be honorable. In reaching this conclusion, the Board is aware that recoupment of the severance pay is required.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand Petitioner's status in the Fleet Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 12 January 1998 but continued to serve on active duty until he transferred to the Fleet Reserve under TERA at the earliest possible date with his service characterized as honorable.

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

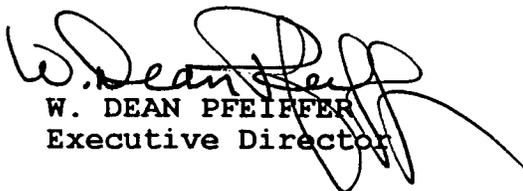
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



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