



b. Enclosure (1) was filed in a timely manner

c. Petitioner enlisted in the Navy on 20 May 1997 for four years as an E-2. At that time, he extended his enlistment for an additional period of 12 months in exchange for an enlistment bonus of \$3,750.

d. Petitioner's record reflects that he served without incident until 25 November 1997 when he was referred for a psychiatric evaluation. His chief complaint was "I can't take much more of this. I'm in a lot of emotional pain." The examining psychiatrist noted that Petitioner reported about six months of increasing dysphoria, anxiety, tearfulness, insomnia, impaired concentration, decreased appetite and anhedonia. He stated, "I just can't go on not sleeping like this...I'm gonna go crazy." It was further noted that Petitioner had reported a lifelong history of extreme social inhibition, sensitivity to rejection, a tendency to be a "people pleaser," dependency on others, and difficulty of being alone. He was diagnosed with an adjustment disorder with mixed anxiety and depressed mood; and a personality disorder, not otherwise specified, with avoidant and dependent features. He was considered unsuitable for service due to a long-standing character disorder. Although he was not considered suicidal or homicidal, he was considered a potential risk for harm to himself and others if retained on active duty. Administrative separation was strongly recommended.

e. Petitioner was referred to psychiatry for reevaluation on 6 January 1998. At the time, he said that "things are getting worse. I'm losing it." He reported during the six weeks, he had experienced worsening dysphoria, tearfulness, recurrent suicidal ideation, anhedonia, and decreased appetite and insomnia. The diagnoses remained unchanged and discharge was again strongly recommended.

f. On 15 January 1998, Petitioner was notified that he was being recommended for separation by reason of convenience of the government due to a diagnosed personality disorder. He was advised of his procedural rights, declined to submit a statement in his own behalf, and waived his other procedural rights. The discharge authority directed the issuance of an honorable discharge and Petitioner was so discharged on 13 February 1998.

g. Sometime after his discharge, Petitioner was notified that the unearned portion of his enlistment bonus was going to

be recouped. On 7 July 1999, in response to his request, the Defense Finance and Accounting Service advised Petitioner that his original debt was \$3,371.88 and that \$314.28 in payments had been received. A balance of \$3,233.94 remained.

h. Petitioner has stated to a staff member of the Board that he was told at the time of his discharge that his enlistment bonus would not be recouped because the basis for his discharge was a medical reason. He asserts that his separation was not voluntary and believes recoupment action is unjust in that he had no control over the basis for which he was discharged.

i. Reference (b) set forth the criteria for remission or waiver of indebtedness or erroneous payments made to or on behalf of members and former members of the Naval Service. This instruction implements Title 10 U.S.C. 6161 and 10 U.S.C. 2774. Waiver action based on 10 U.S.C. 2774 is precluded in this case since the payment of the enlistment bonus was legal and proper when made. However, under the provisions of 10 U.S.C. 6161 a remission of the indebtedness of an enlisted member on active duty is authorized provided the request for remission is approved by the Secretary of the Navy or a designee prior to the individual's honorable discharge.

j. The criteria for requesting such a remission of indebtedness are set forth in reference (b). That reference states that an investigation must be conducted into the facts and circumstances surrounding the request for waiver and the commanding officer must recommend that the request for remission be granted. The reference also directs that active duty members be advised of their right to request remission under the provisions of the reference immediately upon discovery of an overpayment. There is no indication in the record that Petitioner was ever advised as required. It was known, or should have been known, that an indebtedness would occur when discharge was directed. Since he was notified nearly a month prior to being discharged, he could have initiated a request for remission had he been properly advised.

k. Individuals who are discharged by reason of hardship and physical disability are not subject to recoupment action. However, in Petitioner's case, he was discharged due to a

personality disorder, Personality disorders are not disabilities under the law for which an individual may receive a medical discharge.

1. Regulations authorize the assignment of an RE-3G or RE-4 reenlistment code to individuals who are discharged because of a personality disorder.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Mr. Pfeiffer and Ms. Taylor, concludes that Petitioner's request warrants partial favorable action. In reaching its decision, the majority notes that there is no basis for correcting his record to show that he was medically discharged since a personality disorder is not a disability under the law. Further, Petitioner has submitted no evidence that the Navy's diagnosis of a personality disorder was invalid or erroneous. Given his suicidal ideation, Petitioner posed a potential risk for harm to himself and others if retained. Therefore, the majority concludes that the reason for discharge and reenlistment code were proper and no changes are warranted.

However, given its conclusion that the psychiatric report correctly diagnosed a personality disorder, the majority believes that Petitioner was discharged, at least in part, because of a medical condition beyond his control and remission of indebtedness is appropriate. This can be accomplished by showing that a request for remission of indebtedness was granted under the provisions of Title 10 U.S.C. 6161 and reference (b). Paragraph 6.a of reference (b) indicates that a decision on the request for remission must be made prior to discharge. It appears to the majority that Petitioner was not properly advised that he could have applied for a remission of indebtedness while he was on active duty. Had he been so advised, he would have applied for remission in sufficient time to allow for a determination prior to his honorable discharge. Therefore, the Board concludes that the record should be corrected to show that Petitioner's request for waiver of his indebtedness due to the enlistment bonus overpayment of \$3,371.88 was approved by the Secretary of the Navy on 13 February 1998.

MAJORITY RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he requested remission of his indebtedness in the amount of \$3,371.88 and that this request was favorably endorsed by his commanding officer.
- b. That Petitioner's record be further corrected to show that the request for remission was approved by the Secretary of the Navy on 13 February 1998, the day of his discharge.
- c. That this Report of Proceedings constitutes the report of investigation or written report required by reference (b), and the Report of Proceedings be forwarded to the Defense Finance and Accounting Service for implementation under the provision of the regulations.
- d. That the remainder of Petitioner's requests be denied.
- e. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION:

The minority member, Mr. Adams, disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. In this regard, the minority concurs with the majority that the reason for Petitioner's discharge and reenlistment code were proper and no changes are warranted. However, the minority believes that since the payment of the enlistment bonus was legal and proper when paid, there is no valid basis for remitting the indebtedness.

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

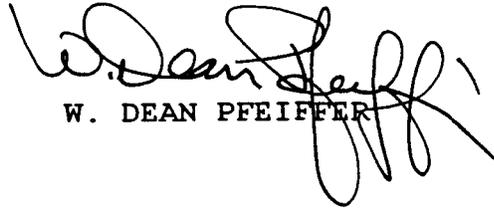
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



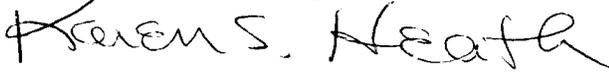
ALAN E. GOLDSMITH  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

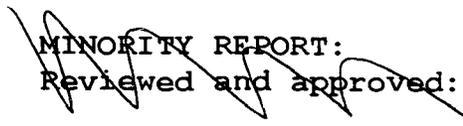
MAJORITY REPORT:

Reviewed and Approved: <sup>AUG 12 1999</sup>

  
KAREN S. HEATH

MINORITY REPORT:

Reviewed and approved:



**KAREN S. HEATH**  
Principal Deputy Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)