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

TRG
Docket No: 2891-99
9 September 1999

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

Subj: REVIEW OF NAVAL RECORD OF [redacted]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NPC Memos of 2 Jul 99 & 3 Aug 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Naval Reserve filed enclosure (1) with this Board requesting that he be reinstated on active duty.

2. The Board, consisting of Mr. Ivins, Mr. Pfeiffer and Mr. Rothlein, reviewed Petitioner's allegations of error and injustice on 9 September 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 28 June 1988 and served in an excellent manner until he was honorably discharged on 27 June 1998, a period of 10 years. He was denied reenlistment due to high year tenure (HYT), because he had not advanced in rate to ABH2 (E-5). At the time of his discharge he was paid separation pay of $17,204.40 and was required to enlist in the Naval Reserve for a period of three years.

d. Petitioner affiliated with a reserve unit on 7 July 1998. Subsequently, the reserve unit discovered that his advancement multiple had been incorrectly computed and that he should have been advanced to ABH2. In a letter dated 24 February 1999 the reserve unit requested authority for advancement.

e. Petitioner applied to the Board on 2 April 1999 requesting reinstatement in the Navy. In his application he points out that if his advancement multiple had been properly computed he would have been eligible for advancement and would have been retained on active duty. He also requests a waiver so he will not have to repay his separation pay.

f. The advisory opinions at enclosure (2) from the Navy Personnel Command (NPC) recommends that Petitioner be advanced to ABH2 on 16 December 1998 with a time in rate (TIR) of 1 July 1998 and that he be reinstated in the Navy.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since Petitioner was actually a selectee for advancement, it is clear that he should not have been denied reenlistment due to HYT. Therefore, the Board agrees with the recommendations contained in the advisory opinions and concludes that Petitioner should be reinstated on active duty and advanced to ABH2.

The Board further concludes that the best way to implement this decision is to correct the record to show a two year extension, effective on 28 June 1998. The record should be further corrected to show that he was advanced to ABH2 on 16 December 1998 with a TIR of 1 July 1998.

Since the record will show that Petitioner was never discharged there is no basis for the payment of separation pay and recoupment of that pay is required. Therefore, the Board concludes that his request for a waiver of repayment should be denied.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 27 June 1998 but extended his enlistment for a period of two years.

b. That Petitioner's naval record be further corrected to show that he was advanced to ABH2 on 16 December 1998 with a TIR of 1 July 1998.

c. That Petitioner's request for a waiver of the requirement to repay the separation pay be denied.

d. 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.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with 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. 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