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

JRE
Docket No: 4738-99
9 December 1999

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

Subj: [redacted]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was honorably discharged by reason of physical disability with entitlement to disability compensation for scoliosis.

2. The Board, consisting of Messrs. Mazza, Pauling and Pfeiffer reviewed Petitioner's allegations of error and injustice on 2 December 1999 and, pursuant to its regulations, recommended partial corrective action.

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 underwent a pre-enlistment physical examination on 6 December 1995 and was found qualified for enlistment. The examining physician noted that Petitioner suffered from scoliosis, but as Petitioner claimed the condition was asymptomatic, and that he did not have a history of back pain, the physician did not consider the scoliosis to be disqualifying. Petitioner enlisted in the Navy on 5 August 1996. He complained of back pain on 22 January 1997, and disclosed that his back had been painful before he enlisted in the Navy. He was given a diagnosis of symptomatic scoliosis, which existed prior to enlistment (EPTE), and should have resulted in his being disqualified from enlistment. On 4 February 1997, Petitioner was advised of his rights in connection with his proposed discharge by reason of erroneous enlistment because of that condition. He did not object to the proposed action at that time, and was discharged on 17 March 1997, with an uncharacterized, entry level separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, and particularly in view of the comments contained in enclosure (2), the Board finds that as Petitioner was not notified of his proposed entry level separation until the after he had completed more than 180 days of active service, when he was no longer in an entry level status, he should have received a characterized discharge.

The Board concluded that his discharge by reason of erroneous enlistment was otherwise proper, however, because the discharge process was initiated while he was assigned to a naval training center (NTC). It noted that he would have been entitled to consideration of his case by a medical board only if he been granted a waiver of physical disqualification in order to enlist, or if he had been reassigned from NTC, Great Lakes, prior to the initiation of the discharge process. In addition, the Board noted that in view of his having concealed his pre-service history of back pain, he was able to enlist, and caused the expenditure, and ultimate waste, of substantial funds for his training, he was fortunate not to have been processed for discharge for fraudulent enlistment.

In view of the foregoing, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was separated from the Navy on 17 march 1997, with an honorable discharge, vice the uncharacterized, entry level separation he actually received on that date.

b. That so much of his application as exceed the foregoing be denied.

c. That a copy of this Report of Proceedings be filed in 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.

ROBERT D. ZSALMAN
Recorder

JAMES R. EXNICIOS
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