



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 801-99

30 August 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 24 June 1994 for six years as a BTC (E-7). At the time of your reenlistment, you had completed nearly 17 years of prior active service. Your record reflects that prior to your reenlistment you had four convictions for driving under the influence (DUI) and had completed in-patient (level III) alcohol rehabilitation treatment in April 1986. The record further reflects that except for two marks of 3.8 in reliability and military behavior on 30 November 1984, you had maintained a perfect 4.0 average in all rating categories on your enlisted performance evaluations through 16 November 1995.

On 16 November 1995 you were convicted by civil authorities of DUI. The civil authorities did not adjudge a sentence and deferred the imposition of punishment to your command. On the same day, you received nonjudicial punishment (NJP) for driving under the influence. Punishment imposed consisted of a forfeiture of \$1000, which was suspended for six months, and a punitive letter of reprimand.

Your alcohol problems continued. In February 1996, you were turned over to the ship by the shore patrol for public intoxication. You completed level III alcohol rehabilitation

treatment for the second time on 22 March 1996. Then in June 1996, you were again arrested for DUI.

On 12 August 1996, you were notified that discharge was being considered by reason of misconduct due to conviction by civil authorities and commission of a serious offense; and by reason of alcohol abuse rehabilitation failure. Although the letter of notification and statement of awareness are not on file in the record, you apparently elected to be represented by counsel and to present your case to an administrative discharge board (ADB)

A report of apprehension was filed on 21 August 1996 which indicated that you somehow wedged your automobile between some railroad tracks. The city police were called and you were turned over to the shore patrol with whom you were uncooperative and refused to obey orders. You were given a breathalyzer test which registered a blood alcohol level of .28 percent.

You received a second NJP on 29 August 1996 for drunk and disorderly conduct. Punishment consisted of forfeitures of \$1,116 per month for two months and 15 days of restriction.

On 10 September 1996, you appeared before an ADB with counsel. The ADB reviewed your record and heard testimony from the main propulsion officer, a drug and alcohol program advisor, an alcohol rehabilitation center counselor, and the command master chief. You testified that you had two sons and daughter from a previous marriage, were remarried in 1994 to a woman who also had a drinking problem, and your drinking increased when your oldest son was accused of raping his sister. You stated that after your son came to live with you, you suspected that your current wife was using drugs and having affairs, and had an abortion while you were undergoing level III treatment. You further testified that you had been given all the tools to maintain sobriety, but were unable to do so with the foregoing problems. The ADB found that you had committed misconduct by reason of civil conviction, commission of a serious offense, and alcohol abuse rehabilitation failure. The ADB recommended that you be discharged under honorable conditions, but that separation be suspended for a period of 12 months.

On 12 September 1996, the commanding officer (CO) concurred with the findings and the recommendation that you be separated from the Naval service, but did not recommend that the separation be suspended. The CO noted that since receiving treatment in 1986, you had been involved in four documented alcohol incidents and an undetermined number of other incidents which were not properly documented. Further, you were still pending civil court action on the June arrest for DUI. The CO stated that your record showed continuous negative involvement with alcohol over the past 19 years, and also noted that you had failed to utilize the

numerous opportunities provided to you through level III treatment, command intervention, and professional counseling. The CO did not believe you were capable of remaining alcohol free and opined that your abuse would most likely continue. He concluded that you had no potential for further useful service and recommended that you be separated.

On 24 September 1996, your counsel submitted a letter in response to the CO's recommendation that the discharge not be suspended. Counsel asserted that the ADB's recommendation for suspension should not be disturbed since the CO had not heard the full story that was related to the ADB. Counsel cited a litany of the extraordinary personal problems which contributed to your return to drinking, but cited no deficiencies in the ADB proceedings.

The record reflects that in October 1996 you got drunk at a club with another chief who drove you home, where you got into an argument with him. The police were called and the matter was turned over to the shore patrol. In November 1996, you were apprehended in a parking lot attempting to break into a truck, charged with being drunk in public, and released to the shore patrol.

On 8 November 1996, the Chief of Naval Personnel (CHNAVPERS) was advised that an ADB had recommended that your separation be suspended for 12 months to allow you to reach 20 years of service. It was noted that retaining you on active duty posed a significant risk and your conduct negated any consideration for retirement under the Temporary Early Retirement Authorization

On 3 December 1996, your were admitted to the hospital for a suicide attempt in which you attempted to hang yourself and ingested a significant number of Motrin and Naprosyn tablets.

Thereafter, the CHNAVPERS forwarded your case to the Deputy Chief of Naval Operations (CNO) and recommended that you be separated with an honorable discharge by reason of misconduct due to commission of a serious offense. On 11 December 1996, CNO directed an honorable discharge by reason of misconduct. You were so discharged on 8 January 1997.

In its review of your application the Board carefully conducted a thorough search of your record for any mitigating factors which might warrant voiding your discharge and granting you sufficient constructive service to allow retirement with 20 years of service. However, no such justification could be found. The Board noted your two statements and service record documents submitted in support of your application and your explanation of the circumstances and family problems which contributed to your return to drinking. The Board believed you received considerable consideration when you were allowed to complete level III

treatment for the second time. As a result, you were provided the necessary tools for maintaining sobriety and completing your enlistment. While your numerous family problems may be considered mitigating, they do not excuse your frequent misconduct or absolve you of responsibility for your actions. The Board believes DUI is inexcusable and is not sympathetic to individuals who commit such offenses.

The Board concurred with your CO's conclusion that you had no potential for further service. The Board notes that the Navy is very reluctant to discharge an individual with more than 19 years of service. However, with two DUIs and at least five documented alcohol related incidents since your reenlistment, such action was appropriate since you had become a liability to the Navy, your command, and your community. The Board particularly noted your claim that you have been sober since January 1997 when you were admitted to the psychiatric ward. If you are now able maintain sobriety, it is a choice you have made and one you could have made while on active duty to protect your career. Your administrative separation was accomplished in compliance with applicable regulations. There is no indication of procedural errors which would have jeopardized your rights. The Board thus concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Copy to:  
Mr. [REDACTED]  
Attorney at Law