



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

ELP
Docket No. 7172-99
26 February 2000

[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 24 February 2000. 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 enlisted in the Navy on 25 February 1981 for four years at age 18. The record reflects that on 24 April 1981 the commanding officer reported to the Naval Military Personnel Command (NMPC) that you were being investigated for fraudulent enlistment due to unrevealed pre-service civil arrests and drug involvement. However, your retention was recommended given your fair record and attitude while in recruit training and sincere desire to remain in the Navy. NMPC authorized retention on 6 May 1981.

During the 13 month period from June 1981 to July 1982 you received four nonjudicial punishments (NJP) and were convicted by a summary court-martial and a special court-martial. Your offenses consisted of three brief periods of unauthorized absence totalling about eight days, failure to obey a lawful written order, reckless driving of a motorcycle, driving at excessive

speeds down the fire lanes of the barracks area, resisting apprehension, assault, three instances of failure to go to or absence from your appointed place of duty, stealing a miniature bottle of liquor, consuming alcoholic beverages while in a restricted status, and signing a false official document.

On 3 August 1982 you underwent a psychiatric evaluation and were diagnosed with alcohol dependence and a mixed personality disorder with immature, passive-aggressive and antisocial features.

On 13 August 1982 you were convicted by special court-martial of stealing an automobile belonging to another Sailor. You were sentenced to confinement at hard labor for three months, forfeitures of \$275 per month for three months and a bad conduct discharge. The record further reflects that on 30 October 1982 you were convicted by civil authorities of armed robbery and sentenced to 180 days in the county jail. You were released from military confinement on 28 October 1982 and placed in the hands of civil authorities to serve the civil confinement. On 19 November 1982 the convening authority approved the special court-martial sentence and considered defense counsel's comments and the recommendation of the court that you receive alcohol rehabilitation treatment prior to discharge.

You returned to military jurisdiction on 21 December 1982 and were admitted to alcohol rehabilitation on 19 January 1983. While in treatment, you were incapable of taking antabuse. You attended Alcoholic Anonymous meetings six days a week, but received no liberty due to your failure to adhere to regulations prohibiting the consumption of alcoholic beverages. After three weeks of observation, the staff agreed that maximum benefits of treatment had been reached. Your prognosis was judged to be poor and it was strongly recommended that you be discharged as an alcohol rehabilitation failure.

On 25 January 1983, you were convicted by civil authorities of leaving the scene of an accident and failure to have a driver's license. You were sentenced to six months of probation and \$10 a month for the cost of supervision. That same day, you were reported UA and remained absent until 14 February 1989 when you were apprehended and turned over to military authorities.

Meanwhile, clemency was denied and the Navy Court of Military Review affirmed the findings and sentence of the 13 August 1982 special court-martial. You received the bad conduct discharge on 1 December 1983.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 16 years since you were

discharged. The Board noted your contentions that you completed a prescribed alcohol rehabilitation treatment program in 1983 and presumed that your discharge would be upgraded upon completion of that program. However, your contentions are not supported by the evidence of record. While you were placed in a rehabilitation program, you did not complete that program because you lacked motivation and continued drinking while in the program. The Board noted that the court recommended that you undergo alcohol rehabilitation treatment prior to discharge. Whether you successfully completed a rehabilitation treatment program had no bearing on the sentence of the court. Further, a court cannot suspend or modify a sentence contingent upon successful completion of treatment.

The Board concluded that recharacterization of your discharge is not warranted given your record of four NJPs, convictions by a summary court-martial and two special courts-martial, and the serious nature of your two civil convictions. The Board concluded that you were guilty of too much misconduct to warrant recharacterization of your discharge to honorable or under honorable conditions. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. 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