



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

ELP  
Docket No. 2982-01  
11 September 2001

[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 Navy Records, sitting in executive session, considered your application on 6 September 2001. 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 8 December 1993 for six years as a JO1 (E-6). At the time of your reenlistment, you had completed more than seven years of prior active service.

The record reflects that you were awarded the Navy Achievement Medal for superior performance while serving as a leadership course facilitator for leading petty officers. You received a second Navy Achievement Medal on 20 October 1996 for your superior performance of duty while serving as public affairs officer and project officer for two port visits of the USS OLIVER HAZARD PERRY. Thereafter, you extended your enlistment for an additional period of two months and were awarded your third Good Conduct Medal in 1997. On 4 March 1998 you were awarded the Navy-Marine Corps Commendation Medal for meritorious service as the Public Affairs Officer at Navy Recruiting District, Buffalo.

On 5 October 1998 the public affairs officer (PAO) provided a sworn statement to a command investigator concerning your downloading of pornography from the worldwide web on a government computer. The PAO noted that his suspicions began after he returned from a period of leave in August 1998, during which time you house-sat for him and his wife. When he went to review the most recent documents on his computer, it listed 15 of the most recent downloaded pictures from the internet. It was evident from the file names they were pornographic. The PAO noted that he confronted you on this lapse of judgment, told you of his discovery, and let you know that he was furious that you would bring such filth into his home, especially when the internet account was under his wife's name. He states that you apologized profusely to him and he told you that you had better not be doing this at work. You said you were not. The PAO did not take any action against you because the pictures were on his home computer. The PAO went on to say he received reports from numerous people that you frequently worked late at night. When questioned, you claimed that you had "no life" and liked to work late and chat with your girlfriend on the internet. In September, the PAO noticed a slide in your performance and that you became overprotective with your computer, always locking it before you left your space. The PAO stated that during a period when several contractors were working in your office, he needed to use your computer to access the news websites. When he did, he found your Netscape history was full of inappropriate sites, which he saved to a disk and gave to the staff judge advocate.

Thereafter, the Naval Criminal Investigative Service initiated an investigation that reviewed photographic/digital images of apparently underage, nude females stored on floppy disks provided by the command. A medical officer determined that four of the six images reviewed were of underage females. A review of your hard drive was conducted, a list of internet sites you allegedly visited was obtained and several additional images of apparently underage male and female individuals were recovered. This list was provided to the computer crimes division for comparison against internet sites known to be distributors of child pornography. Attempts to interrogate you were unproductive as you invoked your right to remain silent.

Based on the foregoing, on 6 August 1999 you received nonjudicial punishment for failure to obey a lawful regulation, false official statements, and violation of the Federal criminal code. Punishment imposed consisted of a reduction in rate to JO2 (E-5), forfeitures of \$905 per month for two months, and 60 days of restriction.

On 7 October 1999 you were notified that discharge action was being initiated by reason of misconduct due to commission of a

serious offense. You were advised of your procedural rights and that if discharge was approved, it could be under other than honorable conditions. You elected to consult with legal counsel but declined to submit a statement in your own behalf, and waived the right to present your case to an administrative discharge board (ADB). The commanding officer recommended a general discharge by reason of misconduct due to commission of a serious offense. The commanding officer stated that child pornography violates Federal law and the standards of moral decency and ethics expected of our Sailors. Thereafter, the discharge authority directed a general discharge by reason of misconduct due to commission of a serious offense. You were so discharged on 5 November 1999 and assigned an RE-4 reenlistment code.

The DD Form 214 issued shows continuous active service from 20 November 1986 to 5 November 1999. The remarks section (block 18) of the DD Form 214 should also show you had "continuous honorable active service from 20 November 1986 until 7 December 1993."

In its review of your application the Board conducted a careful search of your record for any mitigating factors which might warrant a recharacterization of your general discharge. However, no justification for such a change could be found. The Board noted that you were warned by the PAO about utilizing your office computer to access pornographic sites after he discovered you had visited such sites on his home computer. Your contention that this was an isolated incident or an aberration is without merit since you apparently failed to learn from your experience at the PAO's home and continued to breach the PAO's trust by accessing pornographic websites on your office computer. The Board concluded such misconduct during your last period of service did not warrant a fully honorable characterization of service. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct. The Board concluded that the discharge and reenlistment code were proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are advised that corrections to block 18 of your DD Form 214 are administrative in nature and do not require action by the Board. You may submit a request for correction of block 18 to Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055.

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