



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

JRE
Docket No: 7108-00
14 November 2001



This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 20 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 was not persuaded that the line of duty(LOD)/misconduct determination made in your case is erroneous or unjust. In this connection it substantially concurred with the rationale of the Director, Naval Council of Personnel, contained in his letter to the President, Physical Evaluation Board (PEB) of 28 October 1998, a copy of which is attached. In addition, the Board concluded that there is no reliable evidence which is probative of your contention that you were a passenger in the vehicle in which you were injured, rather than the driver, or that you were not intoxicated. The affidavits of Mr. Langenheim dated 14 July 1997 and 26 January 1998 were not considered credible, as they are controverted by evidence contained in the line of duty investigation report (LODI). The results of the polygraph examination you underwent on 31 May 1997 were of no probative value because such results are unreliable in general, and because the relevant questions posed to you are vague and subject to personal interpretation. For example, it is possible that you showed no deception when you gave a negative response to the question "Are you the person who drove Greg's car on December 16, 1996" because the car belonged to Greg's wife rather than him, or because you were not the only driver of that vehicle on that date. The Board rejected the

determination of the hearing panel of the PEB of 21 May 1988, that the LODI was "...INSUFFICIENT AND POSSIBLY INCORRECT", because it is unsubstantiated, and contrary to the great weight of the available evidence which indicates that you were injured as a result of your operation a motor vehicle in a grossly negligent manner, i.e., while intoxicated and at a rate of speed excessive for prevailing conditions. The Board noted that there is no requirement that a formal chain of custody be maintained in order for the results of blood alcohol testing to be used in making LOD/misconduct determinations, and it could not find a valid basis for questioning the reliability of the blood alcohol testing results which establish that you were severely intoxicated at the time in question. It was not persuaded that you were denied any substantial right during the course of the LODI or your disability evaluation, or that the burden of proof was improperly shifted to you at any point during those proceedings.

In view of the foregoing, 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

Enclosure

28 October 98

From: Director, Naval Council of Personnel Boards
To: President, Physical Evaluation Board

Subj: LINE OF DUTY MISCONDUCT DETERMINATION ICO [REDACTED]
[REDACTED]

Ref: (a) SECNAVINST 1850.4C

1. Per your request, I have reviewed in detail all data associated with [REDACTED] motor vehicle accident, to include the line of duty investigation, the Hearing Panel Bethesda report, and all pertinent attorney correspondence. As set forth in paragraph 2085 of reference (a), I have given significant consideration to your request to reverse the general courts-martial convening authority's determination that [REDACTED] injuries were not incurred in the line of duty due to his own misconduct.

2. Additionally, my legal advisor has reviewed the line of duty investigation and other documents submitted, as well as the determination and rationale therefor, and provided me written advice. Paragraph 2085c requires that I may direct a different determination if I have reasonable cause to challenge the credibility of the determination. The standard for my review is whether the field commander's determination was arbitrary and capricious; unsupported by substantial evidence; or contrary to applicable statutes and regulations.

3. I found the line of duty misconduct investigation to be thorough and complete insofar as possible under the facts and circumstances of [REDACTED] motor vehicle accident. The investigating officer's report of investigation, and the endorsements from the convening authority and the officer exercising general courts-martial authority appear to reflect considerable thought and analysis of the evidence, and each concluded that [REDACTED] injuries were incurred as a result of his own misconduct.

4. I considered the affidavits submitted by [REDACTED] attorney, as well as the polygrapher's statement, each purporting to place [REDACTED] civilian friend of more than 15 years, behind the wheel of the accident vehicle. I considered the Crash Truck Report and EMT notes detailing the technique and equipment used to extricate the two occupants, and emergency medical procedures rendered. Finally, I used my own experience as a trained aviation safety officer to evaluate the injuries sustained vis-a-vis location in the accident vehicle at the time of impact with the trees.

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Subj: LINE OF DUTY MISCONDUCT DETERMINATION ICO [REDACTED]

5. In consideration of the foregoing, I have no reasonable cause to challenge the credibility of the determination. Nothing in the record suggests the field commander's determination was arbitrary and capricious; unsupported by substantial evidence; or contrary to applicable statutes and regulations.

6. Consequently, the line of duty misconduct determination remains unchanged.



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