



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

WMP
Docket No: 0537-02
27 January 2003

[REDACTED]

[REDACTED]

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 15 January 2003. 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 27 July 1998 for four years at age 18. You served without incident until 17 August 1999, when you received nonjudicial punishment (NJP) for failure to be at your appointed place of duty. The punishment imposed was forfeitures of \$200 per month for three months and 20 days of restriction.

On 22 August 1999 you were found to be alcohol dependent and on 13 December 1999 you reported for level III, inpatient alcohol rehabilitation treatment. However, on 16 December 1999 you withdrew from this treatment program.

On 20 January 2000 you received NJP for three instances of failure to go to your appointed place of duty. The punishment

imposed was forfeitures of \$400 per month for two months, 30 days of restriction and extra duty, and a reduction in rate.

On 26 January 2000, you were notified that separation action was being initiated by reason of misconduct due to a pattern of misconduct and alcohol rehabilitation failure. You were advised of and retained all of your procedural rights including your right to an administrative discharge board (ADB).

On 26 April 2000, you received NJP for three instances of failure to go to your appointed place of duty, conspiracy, and possession and manufacture of military identification cards. The punishment imposed was a forfeiture of \$400 and 30 days of correctional custody.

On 28 April 2000, the ADB met and found by a vote of 2 to 1 that you had committed misconduct, as evidenced by a pattern of misconduct; and that you were an alcohol rehabilitation failure. The ADB further recommended that you be separated with a general discharge.

On 13 June 1986, the commanding officer (CO) forwarded your case to the Commander, Navy Personnel Command (CNPC) recommending that the general discharge be suspended for a period of 12 months. On 15 June 2000, CNPC approved the CO's recommendation and directed that you be counseled and warned concerning the suspended discharge. CNPC noted that further misconduct on your part would be grounds for the CO to vacate the suspension and execute the general discharge.

On 9 May 2001, you received NJP for attempting to access another servicemember's e-mail account. The punishment imposed was a forfeiture of \$521, 60 days of restriction and extra duty, and a reduction in rate. On 10 May 2001 you submitted an appeal to this NJP.

On 2 June 2001, your suspended separation action was vacated based on your continued misconduct, however, final action of the separation was held in abeyance pending the appeal to your NJP of 9 May 2001. On 17 June 2001 your appeal was granted by the NJP appeal authority and returned to the commanding officer for appropriate action.

On 11 July 2001, in response to the action of the NJP appeal authority, the CO changed the previous charge of attempting to access another servicemember's e-mail account to false official statement. The punishment previously imposed was changed to reflect that you were not reduced in rate, however, all other punishment remained in effect.

On 2 August 2001, your commanding officer vacated your previously suspended general discharge and you were so discharged.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that the NJP that resulted in the vacation of your suspended separation was dismissed on appeal. However, the Board found that the NJP appeal authority returned your case to the CO for further action. Based on the NJP appeal authority's action, the CO corrected your NJP to false official statement and your punishment accordingly. Furthermore, CNPC stated that during the period of suspension the CO could vacate the suspension if you engaged in conduct which resulted in disciplinary action. Clearly, your conduct that ultimately resulted in the imposition of NJP violated the probationary period of your suspended administrative separation. Therefore, the Board concluded that your general discharge was appropriate. Since you were discharged by reason of misconduct, an RE-4 reenlistment code was required. 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