



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

JRE
Docket No: 1732-02
20 May 2002



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, reconsidered your application on 18 May 2002, pursuant to the 28 January 2002 remand order issued by the Magistrate Judge of the U.S. District Court for the District of Nevada (the Court). 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, and the record of the two previous reviews of your application by the Board. In addition, the Board considered an advisory opinion furnished by the Director, Naval Council of Personnel Boards dated 1 May 2002, a copy of which is attached. It should be noted that the Director is a senior naval officer who has cognizance over the Physical Evaluation Board (PEB). He has a legal and medical staff, and his determinations, which are made for the Secretary of the Navy in disability matters, are based in part on information and advice provided by his professional staff. The advisory opinion was forwarded to your attorney on 3 May 2002 for his review and comment. To date, the Board has not received a response from him. The Board also considered in-patient records of your hospitalization at Naval Hospital San Diego during the 20-27 July 1983 period.

As a preliminary matter, the Board noted that although it does not have subpoena power, it may, pursuant to the provisions of Secretary of the Navy Instruction 5420.193, enclosure (1), Section 6a(2), require a petitioner to provide such information as it considers essential to a complete and impartial determination of the facts and issues present in the case. The Board wanted to require you to provide additional information, such as records of the evaluation and treatment provided you by [REDACTED], M.D., a psychiatrist whom you apparently saw during June 1987; your high school transcript and your Social Security earnings record; all of your pre- and post-service medical records; and all records reviewed by the Social

Security Administration when adjudicating your claim for disability benefits. The Board also wanted to require you to provide an affidavit in which you would describe your pre-service development and what you believe to be the initial onset of symptoms of your mental disorder, and explain the information contained in paragraphs 2b and 2d of the 27 January 1994 advisory opinion from the President, PEB. However, due to the fact a member of the Board's staff was advised by Government counsel that the Court would not tolerate the delay that would be necessary to obtain this additional information, it had no alternative but to consider the application on the evidence of record.

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. In this connection, the Board confirmed its previous findings and conclusions, and substantially concurred with the comments contained in the advisory opinion provided by the Director, Naval Council of Personnel Boards.

The Board concluded that your enlistment in the Navy was fraudulent in several respects; that you were not qualified for enlistment; and that had you given honest and truthful responses to questions posed to you during your pre-enlistment processing, you would not have been permitted to enlist.

Your enlistment was fraudulent in that you did not provide accurate information to the physician and other medical personnel who conducted your pre-enlistment physical examination. As a result, the physician was prevented from making an accurate determination of your fitness for military duty. In this regard, the Board found that you completed a Standard Form (SF) 93, Report of Medical History, in which you falsely denied all positive medical history other than a fractured wrist. You specifically denied having a history of any of the other sixty-two conditions listed in items 9-11 of the SF 93, or of a suicide attempt, and you checked "No" in response to the question posed in item 20 of the form, "Have you ever had any illness or injury other than those already noted. (If yes, specify when, where, and give details)." Although the Board was not privy to all of the details of your pre-service medical history, it did not believe your representation that you had not received any medical treatment prior to service other than for a broken wrist. The Board also determined that the information you provided in item 25 concerning your history of psychiatric care, and use of drugs, marijuana and alcohol, is false. It noted that a Southern Nevada Mental Health Adult Services (SNMHAS) agency medical record entry dated 2 August 1987 indicates that you had a history of paranoid schizophrenia. It does not indicate when you were given that diagnosis, or by whom. A University Medical Center of South Nevada Psychiatric Evaluation dated 3 August 1987 indicates that you had a history of psychiatric problems in "Kern County" in 1982; that you used to smoke "pot" and take "speed", but stopped one and one half years earlier; that you had been under psychiatric care on an outpatient basis with "psychiatric associates"; and that you disclosed a history of a schizotypal personality disorder. It also indicates that you reported being on Haldol (an anti-psychotic medication) and lithium (used to treat symptoms of bipolar affective disorder) in the past, and that you had used marijuana, "speed" and "ludes (quaaludes)" at age 17,

which was before you enlisted in the Navy. An SNMHAS record entry dated 12 August 1987 indicates that you had a prior history of substance abuse in "the way past". An entry dated 14 August 1987 reveals that when you were about 14 years of age, you tried to suffocate yourself with a mattress. This entry also indicates that you began having migraine headaches at age 10. A Veterans Administration (VA) Form 21-2545 you completed in 1989 states you had "feelings of being self destructive at times" prior to your Navy enlistment.

The information concerning drug and alcohol use in item 20 of the SF 93 you completed on 3 August 1982 does not correspond to the information contained in the statement identified as plaintiff's exhibit (PE) 8 to the complaint you filed with the Court. In the former document, you denied a history of alcohol use. In the latter, you disclosed "having a beer a day while a senior in high school." The Board rejected your statement in PE 8 to the effect that the information you provided on 21 October 1982, while truthful, was obtained while you were having an "acute schizophrenic episode", as there is no credible evidence that you were in a psychotic state on that date or for months thereafter. It also rejected your statement in PE 8 that you were released from the Navy without any "guideline", noting that you signed an SF 88, Report of Physical Examination, on 14 September 1983, acknowledging that you had been advised to seek follow-up counseling from the VA, if necessary.

The Board concluded that the information provided by [REDACTED] R.N., in PE 18 is wrong, in that she states "at no time was [REDACTED] considered to have a substance abuse problem". As you know, she worked for SNMHAS, and presumably was aware of your drug abuse history contained in the records of that agency. In addition, there is an SNMHAS Record of Case Supervision dated 2 November 1988, in which a supervisor queries your case worker "With his history of substance abuse what are the implications of employment in night clubs and life style as a drummer." The case worker replied, in a Progress Review Note dated 14 November 1988, "Substance abuse and the music industry. This can be a problem for people and has been for this client in the past but that was before he was receiving psychotropic meds".

The in-patient records obtained by the staff of the Board contain significant new evidence to support the conclusion that your condition pre-dated your enlistment. These records indicate that you were initially evaluated on 20 July 1983, by a clinical psychologist, rather than [REDACTED]. You reported to him that you had "cured" your "schizophrenia". This is notable, because you had not been given a psychiatric diagnosis by any Navy mental health practitioners as of that date. You also stated that you had undergone a civilian psychological consultation because of "homosexual fears", and you described yourself as a "loner". The psychologist assigned tentative diagnoses of Atypical Psychosis, 298.90, and Schizotypal Personality, 301.27, and recommended that you be considered for hospitalization. You were admitted to a hospital on 20 July 1983 with a diagnosis of Brief Reactive Psychosis; thereafter, you disclosed to [REDACTED] in addition to the psychiatric symptoms detailed elsewhere in your record, a history of migraine headaches, and stated that you had to take "remedial reading" for possible dyslexia while in recruit training. The latter information is significant, especially when viewed in conjunction with the low score you achieved on the

Armed Forces Qualification Test you took prior to your enlistment. Your mother has indicated that you are very intelligent. If that assertion is true, your low AFQT, and need for remedial reading, may indicate a significant pre-service decline in mental functioning. You also admitted to Dr. [REDACTED] that you had stopped using drugs two and one half years earlier, and that you had a prior history of use of marijuana and excessive use of alcohol. Later in your hospitalization you admitted to a psychiatric technician that you occasionally used alcoholic beverages, but denied a history of drug use. You disclosed to the technician that you had a history of psychiatric treatment at age 14 stemming from your fear of being homosexual, and stated that "I used to be schizophrenic, but I worked on it." You were referred for psychological testing, but the results of that testing were described as being of "no value". Dr. [REDACTED] confirmed the diagnoses made by the clinical psychologist, and you were discharged to duty on 27 July 1983. There is no indication in available records that you displayed any symptoms of a mental disorder between that date and 14 September 1983, when you were discharged from the Navy. As you know, you underwent a pre-separation physical examination on that date, and were found physically qualified for discharge. No signs of a psychotic disorder were noted by the physician who conducted the examination.

The Board was not persuaded that you are entitled to relief based on the opinions of Drs. [REDACTED] and [REDACTED]. Dr. [REDACTED] is not a psychiatrist, and was no longer a psychiatric resident when he wrote a statement in support of your request. He did not have the benefit of reviewing your in-patient records before rendering his opinion, which was many years after you were discharged, and we do not know with certainty what information Dr. [REDACTED] provided him or what he based his opinion on. Dr. [REDACTED] opinion is of limited value, because he did not review the in-patient records, and he appears to have based his opinion based on your current version of your pre-service history and development, which the Board considers to be false. The Board could not accept Dr. [REDACTED]'s statement to the effect that since the physician who conducted your pre-enlistment physical examination did not detect a personality disorder, you could not have had a such a disorder. The Board does not believe that a personality disorder is susceptible to diagnosis based on a brief interview by a general medical doctor, and especially when the person being examined is not truthful. The impression Dr. [REDACTED] creates that your schizophrenia could have been caused by the stress of recruit training is without scientific support. His failure to note that a schizotypal personality disorder is one of the three personality disorders often associated with psychotic episodes is telling. He also failed to note that a personality disorder may not have its onset until early adulthood, or come to clinical attention until late in life. He did not explain that a personality disorder may be associated or coexist with, and/or develop into, a psychotic disorder. It is significant that Dr. [REDACTED] did not examine you, conduct a critical review of all pertinent medical records, or evaluate the information noted above concerning your pre-service history of drug abuse, symptoms of a mental disorder, and withholding of pertinent medical history when applying for enlistment. The Board noted that the diagnoses you were given in 1983 by a clinical psychologist and Dr. [REDACTED] were confirmed by observations and evaluations conducted over a 7 day period of hospitalization. It believes that the findings made in 1983 are entitled to substantially more weight than Dr. [REDACTED]

It appears that Dr. [REDACTED] sole function in this case was to support your contention that you were unfit for duty because of a mental disorder which was incurred in or aggravated by your naval service.

The Board noted that even if it were to determine that your condition was incurred in or aggravated by your service, you would not be entitled to the corrective action you are seeking. Your condition did not meet the diagnostic criteria for a diagnosis of schizophrenia at the time of your discharge, because you did not have symptoms of that disorder for a period of six months, as is required. In addition, your condition was apparently quiescent during the 27 July through 14 September 1983 period, after you were released from the hospital, despite the fact that you were not receiving any treatment or taking any psychotropic medications, and it would not have been ratable at 30% or higher, which is the minimum rating necessary to qualify for disability retirement. The Board concluded that if the symptoms you complained of during your first ninety days of service had been classified at that time as the prodromal manifestations of a schizophrenic process, as Dr. [REDACTED] alleges they were, you would have been discharged for failing to meet the minimum physical standards for enlistment, and not accorded any Navy disability benefits.

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. 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



DEPARTMENT OF THE NAVY
NAVAL COUNCIL OF PERSONNEL BOARDS
720 KENNON STREET SE STE 309
WASHINGTON NAVY YARD DC 20374-5023

5220 IN REPLY REFER TO
Ser: 02-05
1 May 02

From: Director, Naval Council of Personnel Boards
To: Executive Director, Board for Corrections of Naval
Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN THE CASE
OF FORMER [REDACTED]

Ref: (a) Your ltr JR:jdh Docket No: 1732-02 of 19 Mar 02
(b) SECNAVINST 1850.4D

1. This letter responds to reference (a) which requested comments and a recommendation regarding Petitioner's request for correction of his naval records. On 14 September 1983, the Petitioner was discharged from the service. He was discharged with a diagnosis of Schizotypal Personality Disorder.

2. The Petitioner's case history, contained in reference (a), was thoroughly reviewed in accordance with reference (b) and is returned. The following comments are provided:

- (a) Member was not unfit due to his subsequently diagnosed Schizophrenic Disorder at the time of his discharge from the Navy.
- (b) Even if the member's case had been sent to the Physical Evaluation Board (PEB) and the PEB had made the determination that the member was unfit, his condition would have been determined to have Existed Prior to Enlistment in the service and to have been "Not Service Aggravated" (EPTE, NSA).

3. In summary, the evidence suggests that the manifestations of Subject Name Former Member's clinical condition at the time of his discharge from the Navy were more consistent with a Schizotypal Personality Disorder under stress than a Schizophrenic Disorder, per se, given that he appeared to have returned to his pre-service baseline of occupational functioning for most of the next 4 years.

[REDACTED]