



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

TRG  
Docket No: 5683-01  
27 November 2002

[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 20 November 2002. 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.

You were commissioned in the Navy on 5 September 1990 after more than five years of enlisted service. On 20 April 1993 you received nonjudicial punishment (NJP) for an unauthorized absence of about six days, two instances of disobedience, and false official statement. The punishment imposed was a punitive letter of reprimand. The subsequent fitness report for the period ending 1 August 1993 is adverse and mentions the NJP. Since then you have served in an excellent manner and have been promoted to lieutenant. Additionally you have been continued on active duty for three years and apparently will qualify for retirement.

On 7 August 1996 the Board considered and denied your request for removal of the NJP and punitive letter. At that time, the commanding officer (CO) that imposed the NJP submitted a letter stating that he did not remember the particulars of the NJP and no longer had access to the NJP evidence. The CO also stated that he was very lenient and would not have imposed NJP without clear and convincing evidence. The Board concluded at that time that you took actions that prevented your timely return to Naval Hospital, Guantanamo Bay, Cuba and, therefore, the CO did not abuse his discretion when he imposed NJP for the offenses.

Your case was reconsidered based on a letter from the CO who imposed the NJP, in which he stated that he had reviewed your application and recommended that the Board reconsider your case and grant relief. The CO stated, in part, as follows:

.... I strongly believe that the behavior, which brought (him) to NJP, was situational and completely uncharacteristic of this fine young officer. I am further convinced that his difficulties were greatly exacerbated by duty at Guantanamo Bay. Because of the close confinement of the base in Cuba, (His) problems involving his ex-wife were well known to the Command Staff of the base, most of the base population, and were a source of embarrassment, frustration, and humiliation for him. Support services were not available at the time and both communication and travel were difficult at best. The predicament would not have existed in CONUS. ....

The Board carefully reviewed the evidence and again found that you committed offenses and there was no abuse of discretion in 1993 when the NJP was imposed. Additionally there is no provision in the regulations that will allow for the removal of an NJP based solely on the passage of a period of time or subsequent excellent service. Therefore, the removal of the NJP and punitive letter would be unfair to all your contemporaries who served without committing any offenses. The Board thus concluded that a correction to your record was not warranted.

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