



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

WMP

Docket No: 6890-02

4 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 30 October 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, 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 15 September 1989 for six years as a petty officer second class (E-5) after over eleven years of prior naval service. The record reflects that you served without incident until you received nonjudicial punishment (NJP) for failure to obey a lawful order and disrespect to a petty officer. The punishment imposed was a forfeiture of \$200, restriction and extra duty for 14 days, and a reduction in rank from petty officer second class (RM2;E-5) to petty officer third class (RM3;E-4). The reduction was suspended for a period of six months.

On 25 January 1995 you appealed the NJP contending that it was unjust and that the Report and Disposition of Offenses (NAVPERS 1626/7) was not the same form that you had signed before mast. You stated that the Report and Disposition of Offenses (NAVPERS

1626/7) you signed only included the charge of disrespect, and your signatures on the form had been forged. Your appeal was forwarded by your command on 30 January 1995, but was denied on 14 April 1995.

On 27 January 1995 you were placed on report for failing to report for duty at 0600 on 19 January 1995 and at 0700 on 23 January 1995, and for insubordination to a chief petty officer. As a result of this misconduct, the suspended reduction in rate of 18 January 1995 was vacated on 3 February 1995. On 7 February 1995, these pending charges were dismissed.

On 6 February 1995, you submitted a special request to see the Commander, Military Sealift Command, Middle Atlantic (COMSC MIDLANT). You said that a 3 February 1995 NJP had been cancelled and you were told that the charges had been dismissed, but then you were told the charges had not been dismissed. Your request shows that your rate was still RM2.

On 7 February 1995, you were issued order by Naval Medical Center, Portsmouth transferring you to the Transient Personnel Unit (TPU) at Norfolk, VA. During the course of treatment, a medical board convened, however, since your medical records were unavailable, the condition for which you were treated for is unknown.

On 19 April 1995, the "Examiner of Questioned Documents" opined that the signatures on the 13 January 1995 NAVPERS 1626/7 were not written by you, but were transferred to that document by a photocopy or transfer process. On 24 April 1995 you contacted the Naval Criminal Investigative Service (NCIS) for assistance regarding your allegations, however, they declined to investigate.

On 7 June 1995, the Inspector General (IG) for Commander in Chief, U. S. Atlantic Fleet (CINCLANTFLT) investigated your complaint of an improper personnel action. The IG stated that his investigation concluded that the signatures were made by a human hand and concluded that you had signed the original document. The investigation also concluded that due process was provided at your NJP, and your complaint was unsubstantiated.

On 25 July 1995, your attorney sent a letter to the Navy Congressional Liaison Office in which he requested an investigation into the falsification of an official document and complained about CINCLANTFLT IG's investigation. In response to a senator's inquiry, the Deputy Chief of Naval Personnel (CNP) noted that the reduction in rate to RM3 placed you in a high year tenure (HYT) status which precluded you from reenlisting, but, you could request to remain on active duty long enough to take the advancement examination for RM2 twice. You were also advised to petition this Board if you felt you NJP was the result of an error or injustice. Additionally, you were told that you could request NCIS to examine the original report chit to determine if it was authentic. If it was found not to be authentic, you could then request that your NJP be set aside on that basis. Subsequently, you applied to the Board.

On 13 September 1995, the TPU, Norfolk submitted a request for waiver of HYT limits, however, this request was denied by CNP on 28 September 1995. You were honorably discharged on 13 December 1995 by reason of "Non-Retention on Active Duty" and assigned an RE-4 reenlistment code.

On 19 October 1995, at your request, NCIS initiated an investigation into your allegations of forgery. On 1 February 1996, the NCIS completed its investigation into your allegations. The reported noted that the NCIS Forensic laboratory had examined the document in question containing the three signatures alleged to have been forged. On 20 December 1995 a NCIS document examiner concluded "there was evidence which indicated, but was far from conclusive, that she may have prepared the questioned signatures appearing on the front of the report chit."

On 12 December 1996, your former officer-in-charge (OIC) provided a statement concerning the vacated reduction in rate and your allegations that you were not afforded a hearing, as required by regulation, prior to the reduction. He stated that the reduction in rate was vacated at a hearing held by him and his assistant the day after you submitted a special request chit to speak with the COMSC MIDLANT. At that time, the suspended reduction in rate was vacated and the pending charges were dismissed, not for the lack of supporting evidence, but as a

matter of expediency since the ship was getting underway and he had been directed to transfer you to the naval hospital. He further stated that you declined to make a statement at the hearing concerning your actions, and that it appeared that an administrative error had been made as to the effective date of the reduction in rate, which should have been 7 February vice 3 February 1995. This statement was further rebutted by your counsel on 10 April 1997, who contended that you were reduced on 3 February 1995 vice 7 February 1995.

On 28 August 1997, your counsel was advised that your case had been presented to the Board and it had recommended removal of the 3 February 1995 vacation action. The Board also recommended, conditioned upon your approval, transfer to the Fleet Reserve under the provisions of the Temporary Early Retirement Authority (TERA). In this regard, the Board felt that you should approve such a recommendation because it could be considered detrimental since the involuntary separation pay you received upon discharge would be recouped if the record was corrected to show a transfer to the Fleet Reserve. Your counsel was further advised that if you found transfer to the Fleet Reserve to be unacceptable, the Board recommended that the reason for discharge be changed to "Completion of Required Active Service" and the RE-4 reenlistment code be changed to RE-1. The following day, your counsel responded that any recommendation other than complete reinstatement to active duty was unacceptable. On 2 October 1997, counsel further advised that you had rejected transfer to the Fleet Reserve.

On 23 February 1998, the secretarial designee directed that your records be corrected to show that you were involuntarily discharged on 13 December 1995 by reason of "Completion of Required Active Service" vice "Non-Retention on Active Duty", assigned an RE-1 vice an RE-4 reenlistment code, and assigned an involuntary separation code of "JBK" vice "JGH". Your records were further corrected to show that the reduction in rate to RM3, which was suspended on 18 January 1995, was not vacated on 3 February 1995, and that you were never reduced from RM2 to RM3. Additionally, certain corrections to your enlisted performance record (page 9) were directed.

In its review of your current application the Board carefully weighed all potentially mitigating factors such as your

contention that you were in a depressed state of mind after your discharge and this adversely affected your decision-making ability to the extent that you committed an error in judgement by declining transfer to the Fleet Reserve under TERA. However, the Board's previous decision of 27 August 1997 included an offer to so transfer vice being discharged for "Completion of Required Active Service". As a result of numerous consultations with BCNR representatives and your counsel you decided, on 1 October 1997, to accept your discharge vice transfer to the Fleet Reserve. Furthermore, the Board concluded that given the fact that a significant amount of time was afforded you to come to the decision to accept the discharge option, and the fact that you failed to provide any evidence stating that you were incapable of making a competent decision, the Board concluded that appropriate relief had already been granted in your case and no further corrective action is 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