



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

TRG
Docket No: 7750-01
14 August 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 July 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 reenlisted in the Navy for six years on 17 January 1997. On 12 November 1998 you received nonjudicial punishment (NJP) for insubordination. Despite the NJP, you were frocked to radioman second class (RM2; E-5) on 10 December 1998. On 4 January 1999 you were notified that your top secret clearance was being withdrawn due to your financial difficulties, demonstrated immaturity and documented lack of reliability. Subsequently, the command withdrew the recommendation for advancement to RM2.

On 11 February 1999, you received NJP for wrongfully failing to pay, and frauds against the United States. The punishment imposed included a reduction in rate from RM3 (E-4) to RMSN (E-3). In your appeal of the NJP, you contended that your actions did not meet the legal elements of the offense of dishonorably failing to pay a just debt. These elements were deceit, evasion, false promises, or other distinctly culpable circumstances that indicate a deliberate nonpayment or grossly indifferent attitude toward one's just obligations. You also pointed out that you were notified and interrogated by your chain of command in June 1998 concerning nonpayment of child support, back child support and legal fees. You contended this is the same period for which

you were charged with dishonorable failure to pay a just debt. You believed that more than mere failure to pay the entire debt immediately upon notice is required for criminal liability. Finally you pointed out that you were paying less than the child support amount directed by the court because you were appealing that decision, and had established a payment plan to pay the accrued legal fees.

In his endorsement on your appeal, the commanding officer stated, in part, as follows:

.... it was brought to my attention that (he) has failed to pay a debt ordered by the State of North Carolina Court on 14 April 1998 of approximately \$2,600 for back child support from January 1998 until April 1998 and lawyers fees of approximately \$2,800. To this date, he has not made any payments. He does not deny the fact that the child is his, and has claimed her as a dependent since May 1996. (He) should have begun to pay child support when he declared his daughter as a dependent, but he failed to do so. I also learned of a warrant for (his) arrest in North Carolina for failure to pay child support. Since the mast, the command has received another indebtedness letter for failing to pay back a loan which he took out to put a down payment on a vehicle.

The commanding officer believed that all of the elements of the offense of dishonorably failing to pay a debt were met, and stated as follows:

.... (He) is required to pay \$281 for child support twice a month in accordance with (the) court order and currently only has an allotment for \$200 per month. He has not begun to pay the back child support that he was ordered to pay in April of 1998. Further (he) received advanced pay in December in the amount of approximately \$1,100 of which none was used to help pay those debts; orders were not executed nor does he have any of the \$1,100 remaining.

.... (He) has not made any effort to pay the court ordered back child support and only recently made an agreement with the lawyer for fees.

.... (He) has begun to pay child support in the amount of \$200 a month, however, he had not begun, nor made any arrangement to pay his back child support; the offense that he went to NJP for. In addition, the \$200 a month is less than half of what he was ordered to pay by the court.

(He) has brought discredit upon the Navy through his lack of action in this matter. Not only has he not paid debts but it was brought to my attention at NJP that he purchased an automobile in December which (sic) monthly payments are in excess of \$500 a month. He was advised by his chain of command not to purchase a new vehicle; he is grossly indifferent to the needs of his daughter and his just debts.

On 5 March 1999, your appeal was denied by the Commander, Amphibious Group Two.

In your application you continue to assert, in effect, that the NJP was too severe given the circumstances of your case. You point out that you had made arrangements to pay the debts and notified your command about the indebtedness problems in an attempt to receive help, but they used this information against you.

In reaching its decision, the Board substantially agreed with the comments made by the commanding officer in his endorsement on your NJP appeal. The Board concluded that the commanding officer did not abuse his discretion when he imposed NJP and the punishment imposed was not too severe for the offenses you committed.

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