



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

CRS
Docket No: 572-08
30 September 2008



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 10 September 2008. 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 12 November 2003. Urine samples you provided on 23 and 25 March 2007 tested positive for amphetamines. On 5 April 2007, the Commanding Officer, USS Toledo, imposed nonjudicial punishment on you for wrongful use of amphetamines on 23 March 2007. The punishment consisted of forfeiture of one-half pay per month for two months, restriction for one day, and reduction in rate from MM3, E-4 to MMFN, E-3.

On 7 August 2007 an administrative discharge board (ADB) convened to determine if you had committed misconduct due to drug abuse. The ADB found no misconduct and voted to retain you in the Navy. The members of the ADB apparently accepted your testimony to the effect that you had no recollection of using amphetamines, and that of Ms. M, who was with you at a pub on the evening of 22 March 2007. She stated that you left the pub and went to a house, where you complained of a headache, and she gave you what she thought was Tylenol. After learning of the results of the aforementioned urinalyses, she realized that she could have mistakenly given you Adderall, a prescription drug containing amphetamines that she had been prescribed for attention deficit disorder, because the house was dimly lighted, and she carried a

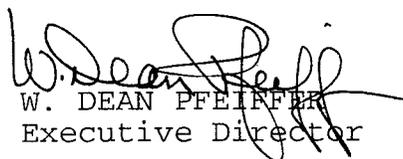
lot of medications, all of which were in one container.

On 18 September 2007 the Commanding Officer, Naval Submarine Support Center, requested that the Director, Navy Alcohol and Drug Abuse Prevention Branch, annotate the "ADMITS" database to reflect that the positive urinalysis in your case was not a drug abuse incident.

The Board was not persuaded that the nonjudicial punishment you received on 5 April 2007 is erroneous or unjust, notwithstanding the findings of the ADB of 7 August 2007 and the determination of the Commanding Officer, Naval Submarine Support Center of 18 September 2007. The Board did not find the testimony of Ms. M to be compelling evidence of your innocence. It concluded that the Commanding Officer, USS Toledo, acted reasonably in your case, and that he was in the best position to resolve factual issues and to impose appropriate punishment. The Board concluded that you have not demonstrated that it would be in the interest of justice for it to set-aside the nonjudicial punishment. 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