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

HD:hd
Docket No. 01489-08
22 September 2008

[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.

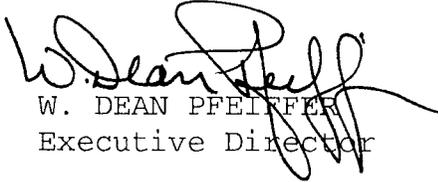
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 September 2008. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 21 March 2008, a copy of which is attached.

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 substantially concurred with the comments contained in the advisory opinion. 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

Enclosure



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1920
SER 834/018
21 Mar 08

From: Navy Personnel Command, PERS-834B
To: Executive Director, Board for Corrections of Naval Record
Via: Assistant for BCNR Matters, PERS-31C

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN THE CASE OF
██

Ref: (a) PERS-31C Memo 5420 PERS-31C of 08
(b) MILPERSMAN 1611-010
(c) SECNAVINST 1920.6C
(d) SECNAVINST 5300.28D
(e) BUPERSINST 1070.27B

1. Reference (a) requested an opinion concerning the request for removal of a civil action report from ██████████ official record.

a. In accordance with reference (b) the commanding officer shall submit a Final Civil Action Report to Navy Personnel Command (PERS 834). References (c) and (d) extend the definition of a substantiated civil conviction as conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty, which would amount to an offense under the UCMJ. Per reference (e), documents to be filed in the electronic personnel records include reports and related correspondence reflecting final approved civil convictions or actions taken by civil authorities tantamount to a conviction

b. The Final Civil Action Report properly reported the events as they occurred, including the charges being reduced to a reckless violation, fines, and fees ██████████ required to pay and additional requirements she was to complete.

c. The court order setting aside conviction states "this order shall not: (5) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event the defendant is charged with a subsequent offense...: (6) Preclude the proof of the conviction to determine whether the defendant is eligible to have a subsequent conviction set aside." The court did not order the conviction overturned, merely set aside. The court clearly intended a record of

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[REDACTED]

conviction to be maintained for potential future uses.

d. [REDACTED] paid the fines and completed all requirements as originally ordered by the court prior to the motion to set aside being brought before the court. None of this was reversed. The court set aside the conviction but not the fact the incident occurred. Navy holds the same view. The information contained [REDACTED] permanent record should not be removed.

2. I may be reached at Comm. (901)874-2090 or DSN 882-2090.

[REDACTED]
Branch Head, Officer Performance
and Separations