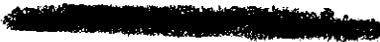
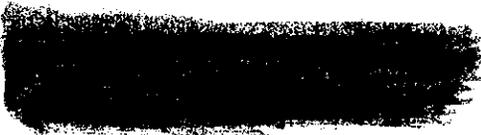




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

CRS  
Docket No: 9343-08  
4 March 2010



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 4 March 2010. 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 Headquarters Marine Corps, Military Law Branch, dated 29 May 2009, a copy of which is attached.

After careful and conscientious consideration of the entire record, and notwithstanding the advisory opinion from Headquarters Marine Corps, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 18 February 2005 you were notified that a Board of Inquiry (BOI) would be convened to make a recommendation on your retention in the Marine Corps. You were informed that the specific reasons for separation to be considered by the BOI were substandard performance of duty, misconduct, and moral or professional dereliction as evidenced by one of the following:

- a. Failure to demonstrate acceptable qualities of leadership required of an officer of your grade by entering into an adulterous relationship with a female Captain of Marines, the wife of another Captain of Marines.
- b. Commission of a military offense which could be punished by confinement of 6 months or more and any other misconduct which would require specific intent

for conviction, specifically conduct unbecoming an officer and adultery as evidenced by your conviction at general court-martial on 14 February 2005.

The notification stated further:

"2. The facts supporting the referral to the Board are all facts outlined in the report of court-martial conviction as recorded in reference c. The Board is not limited to considering these facts alone and may consider any additional facts concerning the reasons for separation."

On 22 March 2005 the BOI reviewed the alleged acts of misconduct, to wit that you entered into an adulterous relationship with a subordinate officer, whom you were the mentor and reporting senior for, and who was married to another subordinate officer in your unit; and you lied to the investigating officer, a lieutenant colonel, denying the relationship. You were convicted by general court-martial on 14 February 2005 of conduct unbecoming an officer by making a false official statement, having an unprofessional relationship with a junior female officer, and adultery.

On the issue of retention, the BOI also considered two prior incidents of misconduct: in 1999 you received nonjudicial punishment and an adverse fitness report for an order violation for misuse of your government computer by viewing pornography; in 2002 you committed a similar order violation, and made a false official statement by lying to the officer appointed to investigate the circumstances of the violation.

During the course of the BOI, you admitted to all of the acts of misconduct detailed in the notification letter, as well as the two prior incidents of misconduct that were considered on the issue of retention. In addition, you admitted that your actions were wrong.

The BOI found that a preponderance of the evidence proved that you (1) failed to demonstrate acceptable qualities of leadership required of an officer of your grade, and (2) committed misconduct, as evidenced by commission of a military offense which could be punished by confinement of 6 months or more. The BOI recommended that you be separated with a characterization of service of under honorable conditions.

On 22 April 2005 the Deputy Commandant for Manpower and Reserve Affairs recommended that you be separated with a general discharge. The Assistant Secretary of the Navy for Manpower and Reserve Affairs approved the recommendation on 2 May 2005. You

were discharged under honorable conditions by reason of unacceptable conduct on 13 May 2005, having completed 19 years, 11 months, and 27 days of active service. Due to administrative error, the DD Form 214 you were issued on or about 13 May 2005, as amended by a DD Form 215, shows that your service was characterized as honorable, rather than under honorable conditions.

The Board noted that you were processed for separation in accordance with the provisions of SECNAVINST 1920.6B, rather than 1920.6C, change 1, as suggested in the advisory opinion.

The Board concluded that you were processed for separation solely on the basis of your commission of the offenses of which you were convicted by general court-martial. It was clear to the Board that you would not have been considered for separation but for that conviction. You were not processed for separation on the basis of performance or conduct identified or reported to the Show Cause Authority more than five years prior to the initiation of separation processing. The record of your nonjudicial punishment was not the basis of the separation processing, and the consideration of that record by the BOI was proper. Had there been evidence of preservice misconduct, the BOI would have been permitted to consider that evidence for the purpose of deciding whether to recommend separation or retention, although not on the issue of characterization of service. The Board concluded that the particularly egregious nature of the misconduct of which you were convicted by general court-martial was more than sufficient by itself to warrant your discharge under honorable conditions, with resulting loss of potential retirement benefits.

The Board was not persuaded that you were denied due process by the BOI, reviewing authorities and/or the Secretary of the Navy. As indicated above, you were notified by the Show Cause Authority on 18 February 2005 that the BOI was not limited to considering the circumstances of your general court-martial conviction, and that it could consider other matters concerning the basis for separation. You were on notice that the BOI and reviewing authorities could consider your entire record, to include evidence of prior acts of misconduct. In addition, you failed to demonstrate that the length of time it took the Judge Advocate General to conduct the review of your conviction by general court-martial resulted in material error or injustice.

The available records do not establish that you completed twenty years of active duty service as you allege. In this regard, the Board found that entries in your official record indicate that your active duty base date was 17 May 1985.

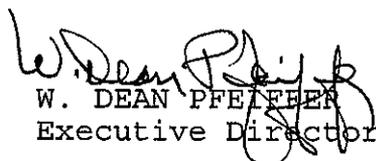
The Board carefully considered both the positive and negative aspects of your service. It was not persuaded that the positive

aspects outweigh negative, or that it would be in the interest of justice to grant your request for correction of your record to show that you were honorably released from active duty and transferred to the Retired List vice discharged from the Marine Corps under honorable conditions.

In view of the foregoing, 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