



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

WJH
Docket No. 10519-08
4 December 2008

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 December 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, a majority of the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. Your application alleges that (a) your NJP of 24 July 2007 was unjust because you were singled out for punishment, (b) you should not have been required to both repay the "lost" funds and forfeit pay simultaneously, (c) the vacation of your suspended punishment occurred outside the six month suspension period, and (d) your punishment was vacated in error because someone other than your commanding officer "signed" your vacation.

Records show that you received NJP on 24 July 2007 for violations of Article 92 (Failure to obey a lawful order) and 108 (Wrongful disposition of military property). Your punishment included, among other things, a reduction in rate to E-4, however the reduction was suspended for a period of six

months (conditioned on refraining from further misconduct). On Wednesday, 12 December 2007, you were apprehended at 0210 in the morning by the Hawaii Armed Services Police. The arrest report states that you (a) were operating a vehicle under the influence of an intoxicant, (b) had an open container of liquor in your vehicle and (c) submitted a breath sample which resulted in a 0.190% BAC. On 3 January 2008, your commanding officer held a hearing to consider vacating the suspended punishment based on the conduct described in the arrest report. You made a personal appearance before the commanding officer. Your commanding officer subsequently made a determination that you had violated the terms of the suspension and he vacated the suspended punishment. Records show that on 16 October 2008, you entered a "no contest" plea in state court to an offense of operating a vehicle under the influence of an intoxicant under HRS 291 E-61(a)(1)(a)(3)(b)(1) and the court thereafter entered a "judgment of conviction."

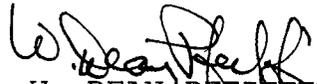
After careful review of the records, the Board finds as follows: Regarding your claim that you were singled out for punishment, the Board found insufficient evidence to substantiate your claim. Regarding your claim that you should not have been required to both repay the "lost" funds and forfeit pay simultaneously, the Board finds that the action your commanding officer took was within his sound discretion and that there was no error or injustice in his determination. Regarding your claim that the vacation of your suspended punishment was outside the six month limit, the Board finds that the commanding officer's decision to vacate your punishment was made on 3 January 2008 and was within the six month suspension period. Regarding your allegation that error occurred because someone other than your commanding officer "signed" your vacation, the Board finds no error or injustice. The Board finds that your commanding officer personally made the determination to vacate your suspended punishment. He then ordered the legal officer to carry out the ministerial duty of notifying the Personnel Support Activity Detachment of his decision so that your personnel records would be updated to reflect your reduction in rate. Accordingly, the Board finds no merit to your claim that error occurred because someone other than your commanding officer "signed" your vacation.

In light of all the facts and circumstances surrounding your initial non-judicial punishment and subsequent vacation of suspended punishment, the Board found insufficient evidence of

an error or injustice to warrant the requested relief. 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 also 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