



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

WJH  
Doc. No. 10370-08  
12 August 2009



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 5 August 2009. 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. The Board also carefully considered the advisory opinion provided by the Navy Personnel Command letter 1920 SER 834/0 of 17 February 2009 (a copy of which was previously provided to you through counsel) and your response to that advisory opinion.

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. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

Your application initially requested, essentially, the following: (a) that your education debt be set aside, (b) that block 23 of your DD 214<sup>1</sup> be changed from "ADMINISTRATIVE SEPARATION DUE TO MISCONDUCT" to "RESIGNED", and (c) that block 24 of your DD 214 be changed from "GENERAL" to "GENERAL (UNDER HONORABLE CONDITIONS)".

<sup>1</sup> Certificate of Release or Discharge from Active Duty

You also requested a personal appearance before the Board. After the Navy Personnel Command supported your request under "(b)" and "(c)" above, you added an additional request that (d) the characterization of your discharge be upgraded to "HONORABLE" (vice "GENERAL (UNDER HONORABLE CONDITIONS)").

Prior to consideration of your request by the Board, the Navy Personnel Command administratively corrected blocks 23 and 24 of your DD 214 and administratively reissued a replacement DD 214. A copy of the reissued DD 214 is attached. As you can see, block 23 was corrected to read "RESIGNED", and block 24 was corrected to read "GENERAL (UNDER HONORABLE CONDITIONS)". Accordingly, the corrections you sought in "b" and "c" above have been administratively resolved by the Navy Personnel Command without the need for action by this Board. The Board's subsequent deliberation and determination pertain only to the remaining portions of your request.

The Board members considered your request for a personal appearance, however they found that the issues in the case were adequately documented and that a personal appearance with or without counsel would not materially add to the Board's understanding of the issues involved. Thus, your request for a personal appearance has been denied.

Regarding your remaining requests, the Board carefully considered all of the arguments raised in your application and the evidence you submitted regarding those claims. These arguments include, but are not limited to, your claims that ██████████ stalked and harassed you, that your command failed to take appropriate measures to stop her harassment, that your commanding officer prejudged you, that you were intentionally isolated and treated with disdain, that your conduct was influenced by alcohol and youth, that you lacked sufficient power to avoid or address your situation, that your DUI charge was a result of depression brought on by the above, that the entries in block 23 and 24 were intentionally and deliberately made to further punish you, that your command failed to adequately comply with 10 USC 2005 (g) (2) by not advising you that you might be subject to prorated repayment of the value of your education, that the Navy erred by first issuing a NAVPERS 1070/613 and then requiring that you show cause as to why you should be retained in the Naval service, and that the Navy Personnel Command erred by including a mention of the DUI arrest on a letter forwarding your resignation request without first providing you an opportunity to comment on, clarify or rebut that information.

The Board was not persuaded by any of the arguments you made or the evidence you submitted that your debt should be set aside or that your discharge should be upgraded to a characterization of "HONORABLE". In making this determination, the Board noted the following: You graduated from the Naval Academy in May 2004 after receiving an advanced education at government expense. Upon graduation, you were advised that you would be subject to reimbursement of the value of the education if you failed to complete the required period of active service either voluntarily or due to misconduct. You were punished at nonjudicial punishment in December 2005. You stated at the time that you had made a "very terrible decision" and a "horrible mistake" and that you had been "drinking (alcohol) more than you should have." You did not appeal the imposition of nonjudicial punishment. In August 2006, the Navy Personnel Command directed that you show cause before a board of inquiry (BOI) as to why you should be retained in the Naval service. You were advised again, at that time, that separation (either voluntary or due to misconduct) could result in a reimbursement obligation. On 18 January 2007, rather than appearing at the BOI, where you could have made many of the arguments you are making to advocate for retention or for an "Honorable" characterization of discharge, you submitted a qualified resignation request. Your resignation letter specifically noted that you understood that, if your resignation was accepted you "shall subsequently receive a certificate of general discharge" and that you "could be financially indebted to the US Government based on (your) attendance at the United States Naval Academy."

The Board found that you were provided with a clear opportunity to present your claims about the actions of [REDACTED] and your command to the BOI, which was scheduled for January 2007. However, you knowingly, intentionally and voluntarily<sup>2</sup> relinquished your right to present these claims to the BOI by voluntarily submitting a resignation request. You made a deliberate decision not to present these claims to the BOI. Under these circumstances, the Board found that your present claims about the actions of Lieutenant Davis and your command during the period leading up to your resignation are insufficient to warrant any relief.

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<sup>2</sup> In determining that your resignation was knowing, intelligent, and voluntary, the Board considered the context in which your resignation was tendered. Your request was submitted in January 2007. At the time, you had received four years of training and education at the Naval Academy and had completed over 2.5 years of active commissioned service. Your father was a senior Naval Officer and you had the assistance of qualified legal counsel.

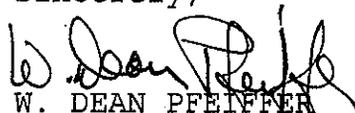
The Board also found no merit to your claim that your command failed to adequately comply with 10 USC 2005(g)(2) by not advising you prior to your non-judicial punishment that you may be subject to recoupment. You were advised of this possible outcome in 2004, well before you were even involved in any misconduct. You were also advised of this possible outcome in August 2006, well before you submitted your voluntary resignation request. Indeed, your resignation letter itself stated that you understood that you "could be financially indebted to the US Government based on (your) attendance at the United States Naval Academy." Your eventual discharge was a direct result of your resignation request. Your nonjudicial punishment may have had a role in triggering the requirement that you show cause as to why you should be retained in the Naval service. But you resigned before even appearing before the BOI. Thus, the eventual outcome of the BOI cannot be known. Your discharge and the resulting educational debt is more directly related to your voluntary resignation than it is to your nonjudicial punishment. Under these circumstances, the Board found no merit to your argument that relief is warranted based on an alleged failure to comply with 10 USC 2005(g)(2).

The Board also found no merit to your argument that relief is warranted because the Navy Personnel Command erred by including a mention of the DUI arrest when forwarding your resignation request without first providing you an opportunity to comment. As stated above, your resignation letter specifically noted that you understood that, if accepted you "shall subsequently receive a certificate of general discharge." Your request was approved and you received a "certificate of general discharge." A characterization of "Honorable" is reserved for discharges where the quality of the member's service generally has met the standard of acceptable conduct and performance for naval personnel. A characterization of "general" is "granted to officers administratively separated for causes wherein the cause for separation or the previous record of the officer concerned is of such a nature as to preclude honorable discharge but is not of such a nature as to require discharge under conditions other than honorable, for example: (1) Acceptance of qualified resignations." The Board found that the quality of your service, as measured by your conduct and performance, even without mention of the DUI arrest, more closely approximates the description associated with a "general" characterization of service. Accordingly, to the extent, if any, the Navy Personnel Command erred (by mentioning your DUI

arrest), such error was harmless as you have shown insufficient evidence of prejudice.

For the foregoing reasons, your application has been denied. 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

Enclosures:

(1) DD 214 of 7 July 2009