



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

TJR
Docket No: 5186-10
9 July 2010

[REDACTED]

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This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 7 July 2010. The names and votes of the members of the panel will be furnished upon request. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy at age 25 and began a period of active duty on 6 July 2007. On 29 January 2009 you were transferred to the Navy Operation Support Center, Tampa, Florida, for humanitarian reasons. You served for two years without disciplinary incident, but on 29 July 2009, you received nonjudicial punishment (NJP) for a one day period of unauthorized absence. The following month, on 13 August 2009, you received NJP for absence from your appointed place of duty and were awarded a \$1,168 forfeiture of pay and restriction for 30 days, which was suspended for six months. Shortly thereafter, on 18 September 2009, you received your third NJP for absence from your appointed place of duty and failure to obey a lawful order. The punishment imposed was a \$1,568.70 forfeiture of pay, extra duty for 90 days, and reduction to paygrade E-2. The forfeitures were suspended for six months.

On 4 November 2009 you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). Subsequently, your commanding officer recommended discharge under honorable conditions by reason of misconduct due to commission of a serious offense. Shortly thereafter, the discharge authority approved this recommendation and directed your commanding officer to issue you a general discharge by reason of misconduct, and on 13 November 2009, you were so discharged.

The Board, in its review of your entire naval record and application, carefully weighed all potentially mitigating factors, such as your desire to change your date of discharge so that you would be eligible to receive an extended 180 days of Tricare coverage for your diagnosed alcoholism and payment for alcohol abuse in-patient rehabilitation. It further considered the MacDill Air Force Base medical documents provided in support of your request. Nevertheless, the Board concluded these factors were not sufficient to warrant relief in your case because of the lack of material evidence in your naval record and the seriousness of your repetitive misconduct which resulted in three NJPs. Further, even if your naval record reflected alcohol abuse at the time of your service, such abuse is not excusable for misconduct and you were responsible for your actions which were also sufficiently serious to warrant administrative separation. Finally, Sailors separated by reason of misconduct normally receive discharges under other than honorable conditions, and as such the Board noted that you were fortunate to receive a general discharge. Accordingly, your application has been denied.

The Board noted that your naval record does not contain any evidence of alcohol abuse (medical screening, diagnoses, or treatment) nor does it contain documentation which would justify your commanding officer to be required to offer you appropriate treatment for drug and/or alcohol dependency prior to separation. In this regard, the Board concluded that there were numerous procedural errors regarding your acceptance in an alcohol rehabilitation program, such as the lack of documentation of your treatment in your naval record, and keeping your chain-of-command informed of your medical condition. As such, these actions eventually resulted in compounded errors when you were referred by MacDill Air Force Base for residential treatment and subsequently started this treatment after you had been administratively discharged from the Navy due to your misconduct, and in the absence of referral authorization from your command. Nevertheless, in regards to your supporting medical documentation regarding your diagnosed alcohol dependency by MacDill Air Force Base and the payment of the erroneously referred residential

treatment, the Board recommended you exhaust your administrative remedies through the Air Force, possibly by seeking a waiver or remission of indebtedness from the Air Force Board for Correction of Military Records, or by obtaining Air Force Secretarial Designee Status in accordance with their health care facility policies. However, since the relief you request is not under the purview of this Board, if your request is denied, you should appeal that denial under the procedures established by and for the Air Force.

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