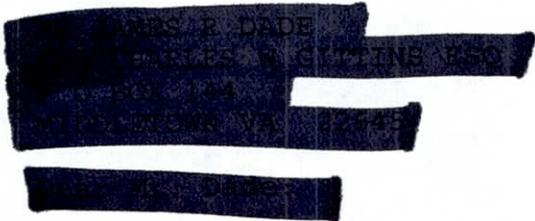




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 7595-10
15 April 2011



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 12 April 2011. 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.

On 24 May 2004 you signed an agreement to serve and acknowledged that you understood the Naval Academy degree requirements. The agreement stated, in part, that should you voluntarily or because of misconduct fail to complete the applicable period of active duty incurred as a result of your graduation or disenrollment, you would reimburse the Navy for the cost of the education received at the Naval Academy.

You were commissioned in the Navy in the rank of ensign (paygrade O1-E) on 23 May 2008 and began a period of active duty. At that time you signed a Drug and Alcohol Abuse Statement of Understanding acknowledging that such abuse violates standards of behavior and duty performance, and would not be tolerated.

There is documented evidence in the record that reflects, in part, that on 3 December 2008 you were "pulled over" by civilian police for driving without headlights. An officer detected a faint alcoholic odor and you stated that you had consumed four

beers an hour prior to driving. You had failed several field sobriety tests and refused the administration of a breath test. You were arrested and charged with driving under the influence (DUI) of alcohol and driving without headlights and held in confinement for 24 hours, pled no contests, and were sentenced to a suspended driver's license for four months, 40 hours community service, an \$800 fine. The sentence included performing probation via email for one year, participation in a "Victims' Impact Panel," attendance at a DUI driving school, and Level I Alcohol Rehabilitation. Shortly thereafter, on 8 December 2008, you received nonjudicial punishment (NJP) for physical control a vehicle while drunk [drunk or reckless driving]. The punishment imposed was a written admonition. You did not appeal the NJP and on 20 December 2008, you submitted a statement regarding the written admonition in which you accepted full responsibility for your misconduct and further stated that such actions would not happen again.

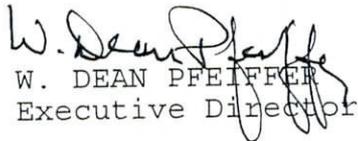
On 12 January 2009 your commanding officer provided the Navy Personnel Command (NPC) with the details surrounding the imposition of your NJP, and recommended that you not be required to show cause for retention. However, on 9 June 2009, you were notified that there was sufficient evidence in the record to show cause for separation by reason of misconduct and substandard performance of duty. In this regard, on 8 July 2009, you submitted two statements of rebuttal in which you voiced your concerns regarding the administrative separation processing, requested retention in the Navy, and questioned the validity of educational debt to the government. Presumably, your statements were taken into consideration at all levels of review, but on 9 October 2009, NPC recommended that you be honorably separated by reason of misconduct as evidenced by the DUI, and that your educational expenses in the amount of \$123,900.00 be recouped. On 19 October 2009 the Assistant Secretary of the Navy (ASN)/(Manpower and Reserve Affairs) approved the foregoing recommendation for separation and a prorated cost for recoupment of your advanced educational assistance. Subsequently, you were advised of the foregoing action and that you would be contacted by the Defense Financial Accounting System (DFAS) to arrange recoupment payments. Shortly thereafter, on 30 November 2009, you were honorably discharged by reason of misconduct.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to remove the NJP and material pertaining to it, change the narrative reason for separation or set aside the discharge, and stop recoupment of your educational expenses. It also considered supporting documentation submitted with your application, to include statements from former servicemembers. Nevertheless, the Board concluded these factors were not sufficient to warrant relief because of the seriousness of your

misconduct as a commission officer in the Navy. Further, there is sufficient documented evidence in the record to support an administrative separation. Finally, the Board noted that Sailors separated by reason of misconduct normally receive discharges under other than honorable conditions, and as such, you were fortunate to receive an honorable discharge. Regarding your assertion that the only reason your command was aware of your DUI was because of your self-admission, the Board concluded this was unsupported. It also noted that when the self-admission obligation was changed, it was not deemed to be retroactive. Finally, the Board noted that this was your second alcohol-related offense. Accordingly, your application has been denied.

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