



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

TRG  
Docket No: 4069-98  
25 June 1999

[REDACTED]

Dear [REDACTED]:

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 22 June 1999. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you received nonjudicial punishment on 26 April 1995 of multiple specifications of making a false official statement. The punishment imposed was a reduction in rate from AW1 (E-6) to AW2 (E-5), and forfeiture of pay which were suspended.

Regulations allow for the destruction of NJP evidence after a period of two years. Therefore, the specifics of the charges are unknown. However, in the performance evaluation for the period 1 December 1994 to 26 April 1995 you were assigned adverse marks of 2.0 in reliability and personal behavior. The following comments were also offered:

... (He) conscientiously made the decision to falsify his VHA recertification record after discovering his divorce decree from 1988 had not be recorded in his personnel record, resulting in over payment of \$2,500. This was also the event that precipitated his appearance at Captain's Mast for violation of UCMJ

Article 107, False official statement (three specifications), for which he was reduced to his present rate ...

You were honorably discharged on 10 June 1995. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

In your application you request, in effect, that the NJP be removed from your record and/or the reduction in rate be set aside. You claim that the commanding officer was in error about the VHA. You have submitted a 1996 action in which this Board corrected your record to allow payment of BAQ and VHA from 28 October 1988, the date of birth of your daughter, until 6 April 1995. Apparently, this action stopped the recoupment of about \$40,000 in excess payments resulting from an erroneous determination that you were not entitled to these payments. You claim that this Board's 1996 action means that there was no basis for the 26 April 1995 NJP.

The pay computation in the record on which the previous Board's action was based does not conclude that you were entitled to BAQ or VHA from the date of your divorce, on 18 May 1988, until your daughter was born on 28 October 1988. The record indicates that the amount of overpayment was about \$2,500, which is consistent with the amount mentioned by the commanding officer in the performance evaluation. As indicated, the Board's correction pertained to payments after 28 October 1988 and did not address amounts before that date. Given the absence of the NJP evidence, the specific nature of the false official statements or when they were made is unknown. However, the Board believed that the comments in the performance evaluation show that an offense occurred. Therefore, the Board concluded that the commanding officer did not abuse his discretion in awarding NJP for the \$2,500 overpayment. The Board further concluded that the punishment imposed was not too severe.

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 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