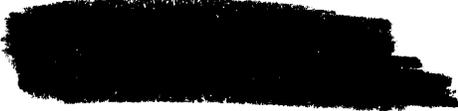




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

CRS  
Docket No: 1920-01  
11 June 2001



Dear [REDACTED]

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 23 May 2001. 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 enlisted in the Naval Reserve on 11 November 1984 after more than three years of prior active service. You then served without incident as a reservist until 16 July 1998, when civil authorities charged you with receiving stolen government property, receiving stolen property, and petty theft.

Based on an agreement with civil authorities which provided that the charges would be dropped if you resigned from the Naval Reserve, the commanding officer then initiated action to administratively separate you with a general discharge by reason of misconduct due to commission of a serious offense. You then elected to waive your right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and you were discharged with a general discharge on 27 May 1999. At this time you were not recommended for reenlistment. On 15 June 1999 the civil authorities dismissed all charges based on your agreed termination from the Naval Reserve.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your contention that the charges were dismissed since you were not guilty. However, the Board concluded that these factors were not sufficient to warrant your reinstatement, given your negotiated agreement with the civil authorities. In this regard, the Board substantially concurred with the comments in the commanding officer's letter of 8 April 2001, a copy of which is attached. Based on the foregoing, the Board concluded that no change to the discharge is warranted. 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



DEPARTMENT OF THE NAVY  
NAVAL AND MARINE CORPS RESERVE CENTER  
6337 BALBOA BOULEVARD  
ENCINO, CALIFORNIA 91316-1584

5800  
Ser NO/306  
8 Apr 01

From: Commanding Officer, Naval and Marine Corps Reserve  
Center Encino, California  
To: Chairman, Board for Correction of Naval Records  
Subj: REQUEST FOR ADMINISTRATIVE DISCHARGE DOCUMENTATION IN THE  
CASE OF [REDACTED]

Ref: (a) Board for Correction of Naval Records ltr  
Docket No. 01920-01 of 15 Mar 01  
(b) NCIS Case Control 15 JUL 98--LACK-0084-6SNA  
(c) PHONCON NMCRC Encino [REDACTED]/NCIS NAWC China Lake  
Field Office [REDACTED] of 21 Mar 01  
(d) Naval Military Personnel Manual  
(e) PHONCON NMCRC Encino [REDACTED]/Kern County District  
Attorney's Office [REDACTED] 23 Mar 01  
(f) Manual For Courts-Martial United States  
(1998 Edition)

Encl: (1) Administrative Separation Procedure Notice -  
Notification Procedure, Letter of Notification and  
Statement of Awareness, ICO [REDACTED] dtd  
16 Mar 99  
(2) NAVMARCORESCEN ENCINO CA ltr 5801 Ser NO/117 of  
8 Apr 99  
(3) NAVMARCORESCEN ENCINO CA Legal Officer ltr of  
23 Apr 99  
(4) NAVMARCORESCEN ENCINO CA ltr 5800 Ser NO/141 of  
10 May 99  
(5) NAVRESREDCOM REG NINETEEN ltr 5800 Ser N00B/650 of  
26 May 99  
(6) NAVPERS 1070/615 (INACTIVE) (Rev. 5-81)  
(7) NAVPERS 1070/613 (Rev. 10-81)  
(8) NAVMARCORESCEN ENCINO CA ltr 1910 Ser NO/152 of  
8 Jun 99

1. In response to reference (a), enclosures (1) through (8) are forwarded. It should be noted that the notation, "By direction" was inadvertently left off under the signature block of enclosure (2).

2. Reference (b), the Naval Criminal Investigation Service (NCIS) investigation case file, and principle evidence used to support the separation action, was not retained at this command following the separation action at the request of the NCIS

APR 17 2001

Subj: REQUEST FOR ADMINISTRATIVE DISCHARGE DOCUMENTATION IN THE  
CASE OF [REDACTED]

Special Agent handling the investigation of Subject. Upon receipt of reference (a), this command contacted the NCIS NAWC China Lake Field Office (reference (c)) to request a copy of reference (b). We were informed that reference (b) had been forwarded to NCIS headquarters in Washington, D.C.. According to reference (c), requests for copies of reference (b) may be made in writing to:

DIRECTOR  
NAVAL CRIMINAL INVESTIGATION SERVICE (ATTN: CODE 00JF)  
WASHINGTON NAVY YARD BLDG 111  
901 M STREET SE  
WASHINGTON, D. C. 20388-5380

3. Reply to Subject's contentions of error.

a. Subject contends she was "not allowed to plead my case" before being separated from the Naval Reserve. .

(1) In the enclosure accompanying reference (a), (DD Form 149, Block 9), the Subject makes the following contention:

**"I was separated from the U.S. Navy (Reserve) due to misconduct with a RE-4 reenlistment code. I was found not guilty on all counts and was not allowed to plead my case before a court martial prior to separation."**

(2) At the start of the separation action, the Subject was sent a Letter of Notification and Statement of Awareness (enclosure (1)), in accordance with reference (d), Article 1910-402. As indicated in enclosure (1) by Subject's initials and signature, Subject waived her right to request an Administrative Board in connection with the separation action. Reference (d) has no provision for any form of Courts-Martial to be convened for the purposes of adjudicating an administrative separation action.

(3) The above contention by the Subject is also factually incorrect as to the status of any judicial determination regarding this matter. As described by the Kern County District Attorney's Office in reference (e), and by the Subject's own statement in the attachment to the enclosure of



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CASE OF [REDACTED]

record, Naval Criminal Investigative Service (NCIS)  
investigation, etc.)."

(4) Prior to initiating Subject's separation procedure, I reviewed reference (b), a NCIS investigation case file, and determined that the preponderance of the evidence in this matter substantiated the civilian criminal charges against Subject and that the specific circumstances of the offense warranted Subject's separation from the Naval Reserve. I also reviewed reference (f), appendix 12 and determined that the same charges under reference (f) (specifically, a violation of the Uniform Code of Military Justice, Article 134 - Stolen property: knowingly receiving, buying, concealing) would warrant a bad-conduct discharge or dishonorable discharge. With the facts of the matter, as known to me, fulfilling the requirements of reference (d), Article 1910-142, I initiated Subject's separation action.

(5) It should be noted that the level of proof required of the factfinder for administrative separation procedures (i.e. a preponderance of the evidence) is significantly lower than that required for a guilty finding in a civil or military criminal proceeding (i.e. beyond a reasonable doubt). This difference in proof levels accounts for those situations where a service member accused of an offense is not formally charged, or charged and found "not guilty", in a criminal proceeding and is still administratively separated from military service for commission of the offense.

4. Additional information for the Board's consideration.

a. Subject's claim of dismay at being separated from the Naval Reserve is disingenuous. After this command began its investigation into the allegations of Subject's misconduct, a Special Agent from the NCIS NAWC China Lake Field Office contacted me inquiring into Subject's status in the Naval Reserve. NCIS had been contacted by the Kern County District Attorney's Office requesting NCIS to verify whether or not Subject was still a member of the Naval Reserve. Apparently the District Attorney's Office was in negotiations with Subject's civilian attorney concerning a plea bargain agreement.

Subj: REQUEST FOR ADMINISTRATIVE DISCHARGE DOCUMENTATION IN THE  
CASE OF [REDACTED]

According to the Special Agent, Subject was willing to "get out" of the Naval Reserve in exchange for the dismissal of civilian criminal charges against her. These negotiations would explain Subject's waiving of her right to an Administrative Board and counsel with regard to the Administrative Separation procedure (enclosure (1)), thus expediting the separation process. These circumstances were confirmed during reference (e), in which Kern County Deputy District Attorney [REDACTED] described the following notes from Subject's civilian criminal court docket file:

April 6, 1999: "Case continued awaiting confirmation of separation."

June 2, 1999: "NCIS notified District Attorney separation complete."

June 15, 1999: "Charges dismissed per agreement."

b. The timing of Subject's request to the Board would also appear to raise doubts regarding the sincerity of the request. If, as according to Subject, she had "dedicated much time and energy into the efforts of crcss-rating from AK to EO" in February 1999, and was supposedly cleared of all charges in June 1999, why did she wait nearly two years to request Board review? While many explanations may sound plausible, I believe the timing may be deliberate in view of the Navy's active duty assignment policy of two to three years per duty station. After two years, many, if not all, of the Full Time Support staff at Naval and Marine Corps Reserve Center Encino directly involved in Subject's separation likely would no longer be aboard the command. This would diminish the command's "institutional memory" of Subject's separation action, reducing the Naval Reserve's ability to fully respond to Subject's accusations of injustice.

5. If we can be of any further assistance regarding this matter, please contact my Admin Officer, [REDACTED] or me at (818) 344-5101.

[REDACTED]