



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

WMP

Docket No: 6881-01

8 April 2002



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 3 April 2002. 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.

You reenlisted in the Navy on 28 August 1984 as a JO1 (E-6) after over seven years of prior active service. The record shows that you were assigned to Naval Station, New York as the drug and alcohol program advisor (DAPA) to the commanding officer.

The record reflects that you appeared before a medical board in June 1986, which reported that you were in good health until August 1985, when you began experiencing episodic vertigo, tinnitus, and headaches. It also stated that you had a stapedectomy performed on the right ear, which essentially cured the episodic vertigo, your right ear pain and the tinnitus, but that you were experiencing sharp, stabbing headache pain. These headaches were initially as infrequent as one to two weeks apart, but over the three months prior to the medical board, they occurred virtually every day. On occasion, you had four to

six of these headaches each day. Diagnosis was atypical cluster headaches and status post stapedectomy of right ear. The recommendations of the medical board were to attempt to control the cluster headaches through medication and a six month period of limited duty.

The record further reflects that you were referred for psychiatric evaluation and hospitalization on 4 August 1986 after your expression of a suicidal ideation. The evaluation found that you had limited insight and poor judgment. You gradually showed better control and insight, compared to your initial anxiety. Your depression with suicidal ideation was gradually reduced. However, you kept complaining of having headaches daily and stated, "Now I can live with headaches but I don't think I am able to continue my military service with this headache." You were diagnosed with psychogenic pain disorder, atypical cluster headaches, atypical depression, and mixed personality disorder. Further, the impression was that you were not fit for full duty and that you wished to be discharged if the headaches were not relieved.

You again appeared before a medical board on 19 August 1986, at which you reported that you were continuing to have daily headaches. After these headaches, you reported that you were physically drained. The diagnosis of this medical board was atypical cluster headaches, adjustment disorder with depressed mood, and status post stapedectomy. The medical board concluded that you were unable to return to full duty and recommended that your case be referred to the Central Physical Evaluation Board (CPEB). On 11 September 1986 the CPEB reviewed your case and found you unfit to perform your duties and assigned you a disability rating of 10%. You appealed this ruling and requested a 30% rating.

On 22 October 1986 you were advised that you were suspected of wrongful use of cocaine due to a positive urinalysis. Your command was advised by medical authorities to remove you from your duties as the DAPA due to this positive urinalysis test.

Based on your positive urinalysis you received nonjudicial punishment (NJP) for wrongful use of cocaine between 6 September and 6 October 1986. Punishment imposed was extra duty for 45 days and reduction in rate to JO2 (E-5), which was suspended for six months.

The Regional Physical Evaluation Board (RPEB) reviewed your case on 25 November 1986 and determined that you were unfit to perform your duties. The RPEB found the evidence and testimony indicated only a minimal degree of impairment which did not sufficiently impact your performance, and found that the previously assigned 10% disability rating was appropriate.

On 31 December 1986, the commanding officer of the USS SAVANNAH (AOR 4) returned a letter to your commanding officer that you were believed to have written between 12 December and 26 December 1986. This letter, which had been addressed to his command, was mailed in a government, postage paid envelope, and was clearly of a personal nature and not related to government business or activities. This letter was returned to your commanding officer because it clearly dealt with legal matters concerning the urinalysis test and the recent nonjudicial punishment, and because of the direct violation of military postal directives.

On 12 January 1987, your suspended punishment awarded at NJP on 10 November 1986 was vacated and you were awarded 45 days of extra duty and reduction in rate to JO2 (E-5). You also received NJP for wrongfully using an official envelope for personal use and wrongfully impeding a lawful investigation during a command urinalysis sweep. Punishment imposed was forfeiture of \$510 per month for two months and reduction in rate to JO3 (E-4).

You were notified that separation action was being initiated by reason of misconduct due to drug abuse on 12 January 1987. At this time, you were advised of all procedural rights, consulted with counsel, and retained all of your rights. On 28 January 1987, after again being advised of all procedural rights and consulting with counsel, you waived all of your rights with the exception of the right to submit statements on your behalf either verbally or in writing before an administrative discharge board (ADB) or in writing if an ADB was not convened.

On 4 February 1987, your commanding officer forwarded your separation action to Commander, Naval Military Personnel Command, who approved your separation under other than honorable conditions on 19 February 1987. On 4 March 1987 you were discharged under other than honorable conditions by reason of misconduct due to drug abuse with an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your medical condition at the time of your discharge, your lengthy period of honorable service, the statements in support of your application, and your statements to the commanding officer and to the Naval Discharge Review Board. Additionally the Board considered the statements of your commanding officer concerning his investigation, your personal letter written concerning your positive urinalysis test and the fact that you were assigned as the command's DAPA. The Board concluded, although your medical problems were significant, you were fully cognizant of the Navy's "Zero Tolerance" policy concerning illegal drug usage. Despite this knowledge, you made a conscious decision to violate that policy and use cocaine. Additionally, the Board concluded that the contents of your letter were factual in nature, and were fully investigated by your commanding officer prior to his initiation of nonjudicial punishment. Furthermore, based on the severity of these incidents and the fact that you were assigned in a highly sensitive and responsible position, the Board concluded that your NJP and subsequent discharge under other than honorable conditions were appropriate. 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