



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

TRG

Docket No: 8587-00
21 June 2001

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 12 June 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. In addition, the Board considered the letter from the Commanding Officer (CO), Navy Recruiting District (NRD), Jacksonville, Florida, dated 6 February 2001, a copy of which is enclosed.

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 record shows that you reported to the NRD, Jacksonville on 16 November 1998. In April 2000 you requested command assistance because you were being denied a loan by the Navy-Marine Corps Relief Society (NMCRS) and you needed immediate monetary relief in order to reimburse bounced checks and avoid incarceration. Subsequently, NMCRS denied your request for a loan, even with the command's favorable endorsement. The CO appealed the denial by contacting the President of NMCRS. At that time, the CO was informed that you had previously declared bankruptcy, taken out a NMCRS loan, and had a history of writing bad checks. Although he was reluctant to approve another loan because of your long history of indebtedness problems, the President NMCRS eventually agreed to the loan.

An NMCRS monthly budget, dated 11 April 2000, shows a total indebtedness of \$38,377 which included a car loan of about \$22,000 and about \$2,216 in bad checks. Apparently with the help

of NMCRS and budget counseling, you have adhered to a budget and are paying your creditors in accordance with an established payment plan.

After considering your previous bankruptcy, indebtedness problems and history of writing bad checks, the commanding officer decided that nonjudicial punishment (NJP) was appropriate in your case. On 12 May 2000 you received NJP for dishonorably failing to pay debts in the amount of \$2,215.78 (presumably the actual total of the bad checks), in violation of Article 134 of the Uniform Code of Military Justice (UCMJ). The punishment imposed was a reduction in rate from NC1 (E-6) to NC2 (E-5), which was suspended for six months.

On 9 July 2000 you were arrested by civil authorities for driving under the influence of alcohol. The command situation report states that you were driving erratically on I-95 in a government vehicle, and sideswiped one car and rear ended another vehicle. The arresting officer found you passed out in the government vehicle with a blood alcohol content of .22. On 18 September 2000 the suspension of the reduction in rate was vacated due to continued misconduct, and you were reduced in rate to NC2. You are scheduled to transfer to the Fleet Reserve on 1 August 2001.

You state in your application that you recognized you had a debt problem, have worked with NMCRS and a debt counseling service and have been paying all of your creditors since April 2000. You contend that since there was no intent to defraud your creditors, the elements of a charge of dishonorable failure to pay debts have not been met.

In the enclosed letter of 6 February 2001, the command points out that you were indebted; writing bad checks; had not informed the command of your previous history of indebtedness, bankruptcy, and writing bad checks; and continued to make excessive purchases since the bankruptcy. The command believes that all of the elements of a charge of dishonorably failing to pay a debt under Article 134, USMJ have been met and recommends that your request for removal of the NJP be denied.

In your rebuttal to the command's letter, you continue to contend that the elements of dishonorably failing to pay debts have not been met. You point out that more than negligence is necessary and failure to pay must be characterized by deceit, evasion, false promises, or other distinctly culpable circumstances indicating a deliberate non-payment or grossly indifferent attitude toward one's just obligations. You further contend that your creditors were satisfied with your conduct because your indebtedness was open-ended credit card debt and the minimum

monthly payments were made on time. Concerning the bad checks you state that your wife wrote most of them and they occurred because you and your wife did not balance your account. You contend that the efforts you made to secure a loan and obtain budget counseling so you could pay your debts means that you have not been indifferent to your obligations and, therefore, this element of the charge has not been met. Finally, you point out that there have been no excessive purchases or bounced checks after the NMCRS budget was made in April 2000 and, in effect, that the commanding officer's comments in this regard are incorrect.

Concerning the driving under the influence arrest you point out that you attended a party hosted by your zone supervisor and there were several other recruiters there driving government vehicles. You point out that this incident has no bearing on the fairness of the initial NJP and have submitted evidence showing that you have been an excellent recruiter before and after the incidents at issue.

In reaching its decision, the Board noted that not all of your indebtedness was credit card debt because your indebtedness included a car loan. Further, it is clear to the Board that your creditors would not be happy when they received a bad check in payment or were asked for a lower interest rate or an extension of time to pay. The Board believed that the commanding officer was referring to your previous history of bankruptcy, writing bad checks and making excessive purchases; and that your current difficulties occurred because you repeated that behavior. Therefore, the Board substantially concurred with the comments contained in the CO's letter and concluded that the NJP was proper and there was no abuse of the CO's discretion. Finally, the Board noted that the punishment you received was not too severe because its imposition was suspended, and was only imposed after the subsequent serious DUI incident.

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

Enclosure