



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

CRS
Docket No: 651-99
23 February 2001

[REDACTED]

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 10 January 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 Navy on 7 May 1985 at age 19. You served without incident until February 1986, when a preliminary evaluation from a counseling and assistance center (CAAC) stated that you appeared to be alcohol dependent and should be scheduled for in-patient treatment. However, the record does not indicate that any such treatment was provided.

The record reflects that on 18 June 1986, you were returned to your ship in an intoxicated condition with a laceration to your chin. On 20 February 1987 you were convicted by civil authorities of urinating in public. The court sentenced you to a fine of \$10 and court costs of \$20. You then received two nonjudicial punishments, on 20 March and 21 July 1987. The offenses included unauthorized absences totalling more than five days, resisting apprehension, assault, and drunk and disorderly conduct. On 11 June 1987 you were again convicted by civil authorities of disorderly conduct and hitchhiking on a city street. The court sentenced you to a fine of \$145 and court costs of \$40.

On 30 August 1988, after testing positive in a urinalysis, you received a third nonjudicial punishment for use of marijuana. On 23 September 1988 you were found not to be dependent on drugs, but were recommended for professional counseling.

Also on 23 September 1988 an administrative discharge board recommended that you be separated with a general discharge by reason of misconduct due to drug abuse and commission of a serious offense. After review by the discharge authority, the recommendation for separation was approved and you received a general discharge by reason of misconduct due to drug abuse on 9 January 1989. At that time you were assigned a reenlistment code of RE-4.

The regulation in effect at the time of your discharge, OPNAVINST 5350.4, offered broad command guidelines for evaluation covering such areas of whether or not the member was considered alcohol dependent, whether assistance beyond the capabilities of the ship was required, and whether to separate. Input for such an evaluation could come from the "substance abuse coordinator, medical officer evaluation, CAAC recommendation, NASAP/NDSAP recommendation, chaplains in designated billets at drug and alcohol program field activities." In your case, the evaluation was performed by a CAAC counselor. In all cases involving a member's alcohol dependency, the commanding officer was required to obtain a medical officer's confirmation before making his final decision. Although there is no evidence in the record, the Board concluded that the medical officer disagreed with CAAC's recommendation for in-patient treatment.

The regulation now in effect, OPNAVINST 5350.4C, is very specific about handling of possible alcohol dependency in that the commanding officer will be provided with a screening summary. The commanding officer shall, in all but exceptional cases, follow the recommendations of the screening summary. Personnel who did not carry out the strict instructions of the regulation will be subject to disciplinary action.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as the contention that you should have received the treatment recommended in the medical evaluation of February 1986, and would have received an honorable discharge if current policies and procedures on alcohol abuse and alcohol rehabilitation were in effect at the time of your discharge. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge or change the reason for discharge, given the two civil court convictions, three nonjudicial punishments, and the involvement with drugs. In this regard, the Board notes the argument concerning current regulations. The reality of the situation is that alcohol abuse was treated somewhat differently at the time of your discharge and current standards do not apply. The Board

noted your statement to the effect that if you had completed alcohol rehabilitation, you would not have committed any disciplinary infractions. However, this is pure speculation on your part.

The Board also noted that any failure to provide treatment pertained to your problem with alcohol abuse. However, you were discharged by reason of misconduct due to drug abuse and not alcohol abuse or misconduct pertaining to such abuse. Finally, the effects of any failure to provide rehabilitation were ameliorated when you received a general discharge instead of the discharge under other than honorable conditions normally issued to an individual discharged by reason of misconduct. Given your record of two civil convictions and three nonjudicial punishments, you were extremely fortunate to receive this more favorable characterization.

Applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to misconduct. In this regard, the Board noted that the record clearly indicates that you committed misconduct by using drugs. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reenlistment code.

Concerning your discussion of the Naval Discharge Review Board (NDRB) and its decision in your case, the Board did not involve itself in the comments about NDRB. For example, Title 32, Code of Federal Regulations, Section 724.903 which you cite, applies to discharge review by NDRB, and not to this Board.

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