



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

TRG
Docket No: 8339-00
20 February 2002

[REDACTED]

[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 February 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 enlisted in the Navy for four years on 28 April 1997 at age 27 and subsequently extended that enlistment for 12 months to establish your eligibility for an enlistment bonus. The documentation to support separation processing, is not filed in your service record. However, the record clearly shows that you were separated from active duty on 10 December 1997 with an entry level separation by reason of entry level performance and conduct, and were assigned an RE-4 reenlistment code. At that time you had completed 7 months and 13 days of active service.

Your medical record shows that during your service you were treated for shin splints, nausea, vomiting, diarrhea and for removal of a plantar wart. The report of medical examination prepared incident to your separation states that you were physically qualified for separation from active duty. The medical history prepared at that time indicates that you were being administratively separated for inability to perform adequately.

You contend that while in recruit training you were unjustly accused of insubordination and were physically abused because you were ordered to exercise after being placed on light duty for shin splints. However, it is clear from your statement and documentation in the medical record that you ultimately completed recruit training and reported for advanced training.

You contend, in effect, that after you began advanced training, you continued to be mistreated, resulting in restriction, extra duties, and sleep deprivation. You also allege that because of a lack of sleep, you failed a test and were dropped from training, which resulted in separation processing. You state that at the time of your enlistment you were a summa cum laude graduate of the University of Maine and contend, in effect, that there must be some sinister explanation for your failure of the Navy test.

Finally, you contend that the separation processing was improper because you were denied the right to consult with counsel, were not properly notified of separation processing and the reason for processing, and were otherwise denied your procedural rights. Since the administrative processing was flawed, you contend that your separation was improper and you must be returned to active duty as if you had never been separated.

As indicated, the separation processing documentation is not filed in your record. The Board has order and received several updated copies microfiche record, but this documentation has not been added to the record. Since you were separated on 10 December 1997, more than four years ago and local files are destroyed after two years, it has been determined that additional documentation concerning your separation is not available. You state that you do not have any such documentation in your possession, and contend that such records never existed and your separation was contrary to law.

The Board's regulations state that there is a "presumption of regularity to support the official actions of public officers, and in the absence of substantial evidence to the contrary, will presume that they properly discharged their official duties." In addition, Section 3, subparagraph d(2) of the regulations state, in part, as follows:

... The Board may deny an application in executive session if it determines that the evidence of record fails to demonstrate the existence of probable material error or injustice. The Board relies of a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they properly discharged their official duties. Applicants, have the burden of overcoming this presumption

Further in a 1998 decision, the United States Court of Federal Claims, in an Army Board for Correction of Military Records case, upheld the presumption of regularity, stating, in part, that it is the responsibility of the applicant to procure evidence not contained in the official file. A copy of this decision is enclosed.

Exercising this presumption, the Board concluded that there was a legitimate reason to process you for separation, the separation processing was begun within the first 180 days of your service, you were properly notified of the reason for separation and afforded an opportunity to consult with military counsel and to exercise your other procedural rights. The Board is aware that individuals are routinely separated while undergoing training, and the training commands are knowledgeable concerning the separation procedures. The Board concluded that in the absence of evidence to the contrary, your separation from the Navy was proper as issued and no change 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

Enclosure