



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

WMP

Docket No: 4561-02

12 November 2002

[REDACTED]

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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 6 November 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.

The Board found that you reenlisted in the Navy on 9 September 1994 for four years after over four years of prior active service. You served without incident until 27 February 1996, when you were convicted by a special court martial of three instances of filing false and fraudulent claims in the amount of \$3,627.40. The punishment imposed was confinement at hard labor for three months and reduction to paygrade E-1. On 23 April 1996 the convening authority approved the adjudged sentence but suspended the reduction for a period of six months.

On 21 March 1996, you were notified that separation action was being initiated by reason of misconduct due to the commission of a serious offense. You were advised of and elected to retain all of your procedural rights on 24 May 1996.

On 24 May 1996, an administrative discharge board (ADB) was convened. The ADB found that you had committed misconduct by reason of commission of a serious offense and recommended a general discharge but further recommended the separation be suspended for a period of 12 months.

On 30 May 1996 your commanding officer forwarded your discharge package to the Chief of Naval Personnel (CNP) recommending an unsuspended general discharge. On 22 July 1996 CNP approved the commanding officer's recommendation and directed your general discharge by reason of misconduct due to commission of a serious offense and the assignment of an RE-4 reenlistment code. On 15 September 1998, you were so discharged.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, the fact that you served almost six years without misconduct, and your contention that the ADB recommended a 12 month suspension of your discharge and you were not given your due process rights. However, the Board concluded that your processing for misconduct by reason of the commission of a serious offense was appropriate based on your special court martial conviction for three instances of filing false and fraudulent claims, as was your general discharge and RE-4 reenlistment code. Furthermore, the Board noted the commanding officer's recommendation to CNP, which stated that he did not concur with the ADB recommendation to suspend your discharge for a period of 12 months. Further, CNP concurred with this recommendation and directed your discharge by reason of misconduct. The recommendation for a suspended sentence was only the ADB's recommendation and was not binding on the separation authority. Disapproval of the ADB's recommendation by CNP does not constitute a violation of an individual's due process rights. Accordingly, the Board found that you were afforded your due process rights and that your discharge was 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