



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

FC
Docket No: 0240-03
27 October 2003



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 22 October 2003. 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. The Board also considered the advisory opinion from the Enlisted Separation Section of the Navy Personnel Command dated 27 August 2003, a copy of which is attached.

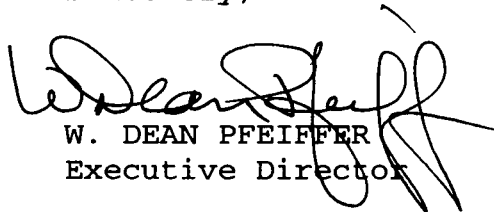
The Board found that you enlisted in the Navy on 16 March 1998 at age 21. You served without incident until 9 November 2000, when you were convicted by special court martial (SPCM) of three periods of unauthorized absence totaling 180 days. You were sentenced to forfeitures of pay, a reduction to paygrade E-1 and a bad conduct discharge (BCD). The BCD was suspended for six months.

On 22 January 2001 you were notified of administrative separation processing and you waived all of your procedural rights. On 1 February 2001 the commanding officer recommended an other than honorable discharge by reason of misconduct due to commission of a serious offense. On 14 February 2001 the separation authority directed an other than honorable discharge, and on 23 February 2001, you were so discharged.

In its review of your case, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, the period of good service, and your assertion that your mother was ill. However, the Board found that these factors and your assertion were not sufficient to warrant recharacterization of your discharge given your three periods of unauthorized absence totaling six months that resulted in a conviction by SPCM. The Board also substantially concurred with the advisory opinion. Accordingly, your request 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:



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

5420
PERS-832B
27 Aug 03

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)**

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED]

Ref: (a) SECNAVINST 1910.4B
(b) ASN(M&RA) Decision Ltr dated 1 Jul 03

Encl: (1) BCNR File 00240-03
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for upgrade of discharge.
2. The review reveals that petitioner attended a Special Court-Martial (SPCM) and received a Bad Conduct Discharge (suspended for six months). It has been a long-standing policy of PERS-832, based upon legal advice from PERS-06L6, to approve administrative separations for cases involving Other than Honorable (OTH) discharges based on SPCM/GCM convictions in which punitive discharges were imposed but suspended. Reference (a) only requires SECNAV approval when a SPCM/GCM did not impose a punitive discharge, and an OTH is warranted. However, a punitive discharge was imposed in this case, but suspended. Although, not applicable to this case, the authority to grant OTH discharges in which no punitive discharge was imposed has been delegated to DCNP (COMNAVPERSCOM) in accordance with reference (b). Therefore, favorable action on this petition is not recommended.

[REDACTED]

Technical Advisor to the
Head, Enlisted Separations
Branch (PERS-832)



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO
APR 7 2003

From: Chief of Naval Personnel
To: Secretary of the Navy

Subj: DELEGATION OF OTHER THAN HONORABLE SEPARATION AUTHORITY
IN CASE OF PERSONNEL FOR WHOM A SPECIAL OR GENERAL COURT-
MARTIAL DID NOT IMPOSE A PUNITIVE DISCHARGE

1. Background. Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) requested a review of current practices to determine if any personnel actions could be delegated below the ASN level. The awarding of an Other Than Honorable discharge under specific conditions was one of several targeted processes and is recommended for delegation as discussed below.

2. Discussion. Per SECNAVINST 1910.4B the Secretary of the Navy is separation authority when the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted.

Recommendations are now mailed from the Sailor's commanding officer, via the Deputy Chief of Naval Personnel to the Assistant Secretary of the Navy. Internal staffing at both headquarters can add a month or more to the time required to resolve each case. The Sailor, convicted of one or more felonies and/or misdemeanors, is by now not fully employable in the more modern and technically oriented Navy. Having the convicted Sailor underfoot while his administrative separation is being staffed is counterproductive. Some way to shorten the time required to process these cases is in the best interest of everyone.

3. Recommendation. Delegate to Deputy Chief of Naval Personnel permission to serve as separation authority when the sole basis for separation is a serious offense that resulted in a conviction by a special or general courts-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted.



Vice Admiral, U.S. Navy

ASN(M&RA) Decision: _____

Approved: _____

Disapproved: _____

Other: _____

b. When the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted.

c. When the separation authority above determines that a characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a service member in an entry level status who is being separated by reason of Selected Changes in Service Obligation, Convenience of the Government, Disability, or Secretarial Plenary Authority (subsections B, C, D, and P of part 1).

d. When an Administrative Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged and recommends retention, but the separation authority above recommends separation.

e. When a servicemember is processed for separation by reason of misconduct - civilian conviction, and final action on the appeal has not been taken, and the servicemember does not request separation before final action on the appeal has been taken.

2. The Secretary of the Navy may assign any of his or her functions, powers, and duties hereunder to the Under Secretary of the Navy and/or the Assistant Secretary of the Navy (M&RA).

3. The Chief of Naval Operations and the Commandant of the Marine Corps are separation authority for involuntary separation of active duty servicemembers who have 18 or more years total active military service. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

4. In separations for conscientious objection, when the GCMCA recommends disapproval, the Chief of Naval Operations or the Commandant of the Marine Corps will make final determination based in the entire record. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

B. Separations Must Be Consistent with the Following:

1. Servicemembers must be processed for all reasons for which minimum criteria are met. However, separation authorities must choose the most appropriate reason when actually effecting the discharge.