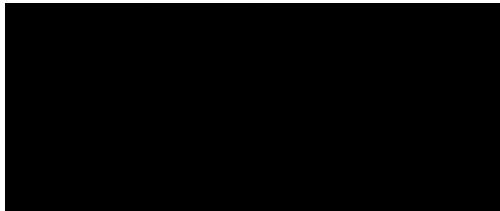




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SJN
Docket No: 08526-10
8 March 2011



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 1 March 2011. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy and began a period of active duty on 22 May 1998. The Board found that you served for over seven years without incident until 5 December 2005, when after being advised of your right to refuse nonjudicial punishment (NJP), you accepted it for disobedience of a lawful general regulation by wrongfully maintaining a personal relationship that was unduly familiar between staff/instructor and student personnel. You received a punitive letter of reprimand. On 9 December 2005, you submitted a letter of appeal to the Chief of Naval Air Training (CNATRA), who reviewed and denied your appeal on 10 January 2006. In his letter, he stated, in part, that the punishment awarded was not unjust nor disproportionate to the offense and that a preponderance of the evidence supported the finding of guilty.

On 17 January 2006, your commanding officer (CO) forwarded a report of NJP, via your chain of command, to the Commander, Naval Personnel Command (NMPC) stating that a detachment for cause or a requirement to show cause for retention was not recommended in your case. On 28 February 2006, you endorsed the report of NJP requesting that you not have to show cause for retention in the Navy. However, CNATRA did not concur with the recommendation of your CO, and stated, in part, that you committed a serious offense in a position of trust and authority, and that you should be required to show cause for retention in the naval service. On 15 May and again on 28 August 2006, NMPC

authority, and that you should be required to show cause for retention in the naval service. On 15 May and again on 28 August 2006, NMPC directed that you show cause for retention. Subsequently, on 13 October 2006, a Board of Inquiry (BOI) was held and found that you had committed misconduct, and recommended that you receive a general discharge. You resigned with a general characterization of service on 30 September 2007.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your record of service and letter of declaration in support of your application. Nevertheless, the Board concluded these factors were not sufficient to warrant removing your NJP or punitive letter of reprimand, recharacterizing your discharge, changing your separation code or reason for your discharge, or removing any documentation pertaining to your show cause BOI. The Board found that your case was thoroughly investigated when it was directed that you show cause for retention by appearing before a BOI.

The Board found that your misconduct was properly charged as a violation of article 92 of the Uniform Code of Military Justice. The Board further found that the Chief of Naval Operations Instruction 5370.2B, paragraph 5b was not unconstitutionally vague nor was it unconstitutionally applied to you. The Board was unable to find that the sexual encounter with [REDACTED] on 25 June 2005, was non-consensual. Finally, the Board was unable to find that the evidence provided by [REDACTED] was an error or injustice. 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