



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

REC  
Docket No: 13164-11  
2 March 2012



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 15 February 2012. 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 were commissioned in the Navy on 29 May 1991. You then served well and without disciplinary incident for more than 20 years. During this period, you were promoted to commander, pay grade 0-5.

Apparently, you were verbally counseled by your Commanding Officer (CO) on three occasions concerning allegations of harassment, and being overly friendly with female civilian employees. On 17 February 2011, during the Pacific Fleet Inspector General (IG) visit, two anonymous Navy Hotline complaints were filed concerning alleged sexual harassment creating a hostile work environment against you. On 18 February 2011, a formal investigation was initiated to determine if a hostile work environment was created or if you had engaged in preferential treatment, and if any sexual harassment was caused by your actions. The results of the investigation were provided

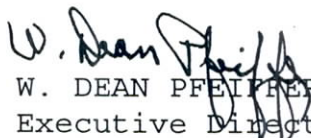
to your CO, and he determined there was sufficient evidence to conduct nonjudicial punishment (NJP). On 1 April 2011, you accepted NJP, and did not demand trial by court-martial. You were charged with violation of the Uniform Code of Military Justice (UCMJ) Article 92: failure to obey four lawful orders to limit your interactions with female employees, wrongfully creating an intimidating, hostile, or offensive work environment, wrongfully traveling to Bali, Indonesia, without authorization, and willfully failing to perform the basic duties and functions of an Executive Officer; Article 133: engaging in inappropriate relationships with female members of the staff, by using your command position to enhance or encourage personal relationships, and significantly departing from acceptable standards of conduct; and Article 134: adultery. You were found guilty of all charges except for adultery, and awarded a punitive letter of reprimand. On 1 April 2011, you were informed of your rights to appeal the NJP, which you elected to do. However, you failed to submit your appeal in a timely manner.

On 18 April 2011, a report of the NJP was forwarded to the Commander, Navy Personnel Command (NPC). On 10 June 2011, NPC directed you to show cause for retention. On 19 October 2011, your case was presented to a Board of Inquiry (BOI). The BOI found by a vote of three to zero that you had not committed misconduct and recommended that you be retained in the Navy. The results of the BOI were forwarded and you were informed that you would be retained in the Navy, but that the NJP would become part of your official record.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, especially the BOI's finding of no misconduct. Nevertheless, the Board concluded these factors were not sufficient to remove the NJP, adverse fitness report, detachment for cause, punitive letter of reprimand from your official record, nor grant you consideration by a special selection board. Additionally, it is important to keep in mind that the NJP and BOI were two separate proceedings, and the decision of the latter does not invalidate the finding of the former. This is especially true in your case because the commanding officer's decision to impose NJP was based on a thorough fact finding investigation. Moreover, you presented no evidence at the BOI that was not carefully reviewed by your commanding officer when he imposed NJP. 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