



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

ELP
Docket No. 580-02
17 May 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Navy Records, sitting in executive session, considered your application on 15 May 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 23 February 1988 for three years. The record reflects that you served without incident until 30 October 1988 when you were arrested for driving under the influence (DUI). On 21 November 1988 the counseling and assistance center (CAAC) advised the commanding officer (CO) that you were not psychologically dependent on alcohol, and you were motivated for further productive service. The CAAC recommended that you be enrolled in the Navy Alcohol and Drug Safety Action Program and placed on the command's level I program.

On 20 December 1988 the DUI was dismissed and you pled guilty to a lesser charge of "wet reckless." You were sentenced to 90 days in jail, fined \$690, and three years of probation. The jail term was suspended.

You served without further incident until 23 February 1990 when you were arrested again for DUI. You were again interviewed by the CAAC, which noted that you had committed two DUI's in a 16 month period. The CAAC advised the CO that it now appeared that you were psychologically dependent on alcohol, and recommended that you be scheduled for treatment at an inpatient rehabilitation facility.

On 19 July 1990 you were notified that you were being considered for discharge by reason of misconduct due to civil conviction. You objected to discharge and elected to present your case to an administrative discharge board (ADB). In the enlisted performance evaluation for the period 1 December 1989 to 20 July 1990, you were assigned adverse marks of 1.0 in the rating categories of "reliability" and "personal behavior." You were not recommended for retention or advancement.

Thereafter, the CO recommended that you be disqualified for submarine duty and decertified from the Personnel Reliability Program (PRP), and notified the Navy Central Adjudication Facility that your security clearance had been withdrawn. You submitted a rebuttal to the recommendation for decertification from the PRP, asserting that you were not a security risk and that your reliability had been strengthened because your drinking had ceased, and you had been attending Alcohol Anonymous meetings since February 1990.

On 8 August 1990 you appeared before an ADB with counsel. The ADB by a 3-0 vote, found that you had committed misconduct due to the civilian conviction for DUI and commission of a serious offense by receiving two civil convictions during the current enlistment, and recommended separation. By a 2-1 vote, the ADB recommended an honorable discharge. Thereafter, the CO recommended discharge and stated that you would be afforded the opportunity to seek treatment through the Veterans Administration.

The record reflects that on 22 August 1990 the Commander, Naval Military Personnel Command (CNMPC) approved the recommendation that you be disqualified for submarine duty by reason of demonstrated unreliability and directed removal of the enlisted submarine designator (SS), and stated that you were no longer entitled to wear the submarine breast insignia. On 28 August 1990, CNMPC directed separation with an honorable discharge by reason of misconduct due to civil conviction. You were so discharged on 7 September 2000 and assigned an RE-4 reenlistment code.

Regulations require the assignment of an RE-4 reenlistment code to individuals who are discharged by reason of misconduct due to civil conviction. Despite your contentions the contrary, removal

of your SS designator was an administrative action and not a punitive one. Reinstatement of the SS designator falls under the purview of Commander, Naval Personnel Command and not this Board. There is no merit to your claim that an ADB was convened only because you did not have sufficient time remaining on your enlistment to be sent to alcohol rehabilitation treatment and were you unwilling to extend the enlistment. The Board could find no error or injustice in your assigned reenlistment code since you were treated no differently than others discharged under similar circumstances. In this regard, an RE-4 reenlistment code must be assigned to an individual discharged by reason of misconduct. The Board noted that since you discharge you have worked in the defense industry, for the Peace Corps and the United Nations; and are currently finishing your doctorate in economics. However, this does not provide a valid basis for changing a correctly assigned reenlistment code. The Board concluded that the reenlistment code was proper 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