



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

AEG
Docket No: 3945-98
24 May 1999

Mr. [REDACTED]

Dear Mr. [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 Naval Records, sitting in executive session, considered your application on 18 May 1999. 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. In addition, the Board considered the memorandum for record (MFR) of 20 August 1998 from the Head of the Board's Discharge Review Section and the advisory opinion of 31 March 1999 from the Deputy Assistant Judge Advocate General (JAG), copies of which are attached.

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 first enlisted in the Navy on 11 July 1980 and subsequently reenlisted or extended your enlistment on several occasions, most recently on 18 March 1994 when you reenlisted for three years. A social security account number (SSAN) appears on all of the enlistment and extension documents.

The record reflects that you served in an excellent to outstanding manner. You were advanced to sonar technician chief petty officer (STGC) in August 1988 and, between 1992 and 1995, you earned three awards of the Navy-Marine Corps Achievement Medal.

On 1 October 1996 you sent a letter to the Commissioner of Social Security which began as follows:

I have been prompted by the Spirit of the Living God to investigate whether the (SSAN) is related to the number described in God's Word, the Holy Bible, the Revelation of John, chapter 13. God's Word commands that no person receive a number, used by a government system where a person may neither buy nor sell without the number. The description of the number does not confine the government number system (of populace control) to just obstructing buying and selling.

So, about a year ago, I began to pray for wisdom and discernment from the living god about the issue and began to take steps to find out if the (SSAN) correlated to the characteristics discussed in Revelation, Chapter 13.

You then went on to describe your efforts to opt out of the social security program after your son was born and opined that you were entitled to do so. You then denied that you had volunteered to participate in that system, refused any benefits from the system for yourself or any members of your family, rescinded any application for benefits or obligations made by or for you, and reserved the right to remuneration of amounts withheld from your pay. You also stated as follows:

I reserve the right to make or refuse further statements to solidify or codify my desire and design to completely disassociate myself and my family from anything and everything associated with the Social Security system, program, Administration, and, but not limited to the (SSAN).

On 6 November 1996 you sent a letter to the Chief of Naval Personnel (CNP) requesting a change in your Military Personnel Identification Number (MPIN), citing Article 4610100 of the Naval Military Personnel Manual (MILPERSMAN). You justified that request, in part, as follows:

I do not have a (SSAN) and I have never had a (SSAN). I wrote a letter to . . . (the) Commissioner of Social Security explaining I have never applied for a (SSAN), my religious convictions prohibit me from applying for one, and the number previously associated with my name is erroneous, a fraud, and not valid. Any previous association of my name with a (SSAN) was done without my willful compliance, my full understanding of my rights or responsibilities under God's Sovereign Law, Common Law, United States Constitutional law, or federal and state statutes. Any association I made of

myself with a (SSAN) was done unconsciously without knowledge of facts or truth about my unalienable rights.

I am not required by positive statute to apply for or obtain a (SSAN). Application to participate in the Social Security System is, and must be, voluntary. I have never volunteered.

In this letter, you stated that you could place the number 000-00-0000 on all Internal Revenue Service forms, but did not specifically request that this number become the new MPIN.

MILPERSMAN Article 4610100 provides guidance pertaining to the MPIN and states, in part, as follows:

1. The (MPIN) assigned to each member upon first entering the Navy shall be the (SSAN) shown on the member's . . . (SSAN) Card. The (MPIN) may be changed only upon approval by (CNP).

. . .

3. If an individual does not possess a (SSAN) Card at the time of application for entry into the Navy, the Navy Recruiter shall assist in obtaining an (SSAN)

. . .

In December 1996 you were reassigned from the staff of Destroyer Squadron 32 to the Surface Ship Acoustic Analysis Center (SSAAC). In connection with that reassignment, on 6 December 1996 you executed an Administrative Remarks (Page 13) entry which stated as follows:

I understand the assignment to which I am ordered . . . requires obligated service to January 1999. I hereby agree to obligate service until January 1999 . . . by either reenlistment or extension of enlistment prior to my expiration of active service. I understand that failure to incur contractual obligated service as agreed by this administrative remarks will automatically result in an RE-4 reenlistment code.

On 6 January 1997 you resubmitted the letter of 6 November 1996 to CNP. In your cover letter you cited problems with your prior command in submitting the earlier letter in a timely manner, and asked for an expeditious reply since the current enlistment would expire on 17 March 1997 and you were required to obligate for an additional 21 months in accordance with the foregoing page 13 entry.

Your request for a new MPIN was the subject of a memorandum of 10

February 1997 from the Assistant CNP for Management Support (Pers-3) to the Deputy Chief of Naval Personnel (DCNP). Pers-3 recommended that the request be denied, essentially citing the first sentence of MILPERSMAN Article 4610100. Pers-3 also cited Executive Order 9397 of 22 November 1943 which states that "any Federal department, establishment or agency shall, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize exclusively the (SSAN's) . . . " Additionally, Pers-3 pointed out that Secretary of the Navy Note (SECNAVNOTE) 1070 did exactly that by stating that "effective 1 January 1972 the (SSAN) will become the sole (MPIN) for all naval personnel." Based on the foregoing, on 11 February 1997 the DCNP denied your request, which was characterized as a request to change your MPIN to 000-00-0000. DCNP also stated that your request could be resubmitted if the SSAN was changed by the Social Security Administration.

On 3 March 1997 you requested that the foregoing decision be reconsidered, citing section B90102d of Section A, Chapter 1, Part 9 of Volume 2 Part B of the DFAS (Defense Finance and Accounting Service) *Pay/Personnel Procedures Manual*, which pertains to the maintenance of the leave and earnings statement (LES) in the servicemember's local records. That provision of the regulation states, in part, that the SSAN will be printed at a particular place on the LES, but further states that "if no (SSAN) is available, BUPERS will assign a pseudo-number pending receipt of the (SSAN). . ."

On 5 March 1997 you submitted a request through the chain of command to extend your enlistment in accordance with the agreement of 6 December 1996. That request was approved one day later. However, on 12 March 1997 you submitted a letter to the Officer-in-Charge (OIC) of the servicing personnel support detachment (PSD) which reads, in part, as follows:

1. Since; the Enlistment Extension Contract prepared for me by (PSD) . . . was deliberately prepared with a number that I cannot identify with; signing the contract will declare by oath the information written above my signature is true; and I by faith am not permitted to identify myself with a number like unto that described in Revelation, chapter 13; I am unable to sign the contract without violating God's sovereign law and my convictions to declare only the truth and to obey Him, loving not my life even unto death.

2. Since; (OIC), SSAAC, communicated to me on three occasions that according to his discussions with (OIC), PSD, that PSD will consider any contract altered by me, to reflect what I declare to be true, as void; the point of my going through the effort to alter and sign the contract is moot.

3. Also since; . . . PSD and (OIC) SSAAC, informed me I am, by law, not allowed to extend unless I am participating in Direct Deposit System (DDS); the point of my going through the effort to alter and sign the contract is moot.

4. Since; I cannot, thus I will not, violate my convictions; I am forced to choose between violating my convictions or exercising my right to alter a contract only to be disqualified; I cannot, and I will not, be manipulated and coerced to sign the Enlistment Extension Contract presented to me by . . . PSD on March 12, 1997.

Lieutenant ██████████ JAGC, USN has submitted an affidavit which reads as follows concerning certain events which occurred on 13 March 1997:

At approximately 0900 . . . I attended a meeting in the office of the (OIC), (PSD) . . . Present at the meeting were myself, (you), (and five representatives from SSAAC and PSD) . . . After everyone was seated, (you were) presented with an extension of enlistment contract for signature.

(You) pointed out two mistakes in the extension contract. One was the presence of a (SSAN), which (you) indicated does not identify him because he does not recognize the use of a (SSAN) . . . (A PSD official) . . . told (you) that if the (SSAN) listed on the contract were lined out, PSD would consider the contract null and void.

At approximately 0917, (you) announced to all those present that he had a deep religious conviction against claiming or being assigned a (SSAN). He also stated that he had already indicated that he would obligate in the U.S. Navy for 21 more months and that he intended to fulfill that promise and gave his verbal word to do so. He further stated, however, that he could not in good conscience sign the extension contract because it contained a (SSAN), a form of identification that he does not recognize.

(Another PSD official) indicated that discharge processing . . . would begin immediately.

Accordingly, on 17 March 1997 you were honorably discharged at the expiration of your enlistment after about 16 years and 8 months of service. An RE-4 reenlistment code was assigned, which indicates that you were not recommended for reenlistment. The separation code assigned, KBK, indicates that the separation was

voluntary. At the time of separation, a page 13 entry was made to the effect that you refused to sign the Certificate of Release or Discharge From Active duty (DD Form 214) because it contained a SSAN.

The Board carefully considered all of the material you submitted in support of your contention, in essence, that your refusal to use a SSAN was proper given your religious beliefs, and you were involuntarily and improperly discharged as the result of a conspiracy to deny you the right to exercise those beliefs. However, the Board substantially concurred with the comments contained in the advisory opinion to the effect that your right to the free exercise of your religious beliefs was not violated, and your discharge was proper.

The Board first noted that use of the SSAN on an Agreement to Extend Enlistment (NAVPERS 1070/621) is required by MILPERSMAN Article 1050150 and section B90432b(2) of the *DFAS Pay/Personnel Procedures Manual*. The Navy is required to use the SSAN on such a document not only by its own regulations, such as MILPERSMAN Article 4610100 and SECNAVNOTE 1070, but also because of the provisions of Executive Order 9397 and Federal law (26 U.S.C. 6109). The exception you cited in your letter of 3 March 1997 clearly applied only to a situation in which the individual had no SSAN, and a temporary number was assigned pending receipt of an SSAN. The Board was aware of the policy set forth in Secretary of the Navy Instruction (SECNAVINST) 1730.8 to accommodate, when possible, religious activities of military members. However, the Board agreed with the advisory opinion that such accommodation was not possible in your case given the foregoing provisions of law and regulation.

The Board further concurred with the advisory opinion that the failure to accommodate your religious beliefs did not violate the Free Exercise Clause of the First Amendment to the Constitution since the regulations mandating the use of the SSAN were neutral and of general applicability. *Employment Division v. Smith*, 494 U.S. 874 (1990); *City of Boerne v. Flores*, 521 U.S. 507 (1997). Further, when reviewing First Amendment restrictions on military members, courts have tended to defer to the judgment of military officials. *Goldman v. Weinberger*, 475 U.S. 503 (1986).

Accordingly, the Board concluded that no corrective action is warranted, and 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

Enclosures:
MFR of 20Aug98
JAG Ltr. of 13Mar99 w/encl.

Copy to:
The Deputy Assistant Judge Advocate General (Litigation)