



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7033-98

24 March 1999

Dear [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 17 March 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. The board also considered the advisory opinion provided by the Department of Psychiatry, Naval Medical Center, San Diego, CA, dated 6 January 1966, a copy of which is 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 reenlisted in the Navy on 13 November 1992 for three years as an SK3 (E-4). At the time of your reenlistment, you had completed more than three years of prior active service.

The record reflects that you served without incident until 12 May 1995 when you were assigned to a transient personnel unit due to spousal abuse substantiated by the Family Advocacy Center (FAC). On 18 May 1995, you were referred to the mental health unit by the FAC for a diagnostic work-up to rule out a personality disorder and because of your repetitive threats to commit suicide. You reported for your appointment on 8 June 1995 and told the examining psychiatrist that after consulting with counsel, you refused to participate in the psychiatric evaluation or answer any questions.

On 30 June 1995, you reported for a psychiatric evaluation at the request of the FAC to determine your amenability for treatment by the Family Advocacy Program. You were described as only superficially cooperative in the interview. The record of medical care noted that a temporary restraining order had been issued because of violent behavior such as dragging your pregnant wife up and down the stairs for two hours; slapping and choking her; physically and verbally abusing her for the past three years; punching and twisting her wrists; and inflicting other painful injuries to her arms, ribs, and legs. It was also alleged that you had recently thrown your wife around, choked her while she was holding your baby, and tried to stuff a condom in her mouth accusing her of infidelity.

You initially denied any violence toward your wife but later said "I don't call it domestic violence, I'm not going to stand there and let any woman strike at me." You did admit to holding your wife down, bruising her arms and legs, slapping her three or four times, pushing her onto a bed and punching her once or twice.

The consultation summary noted that you reported a history of truancy in high school, sexual promiscuity, venereal disease, shoplifting, lying, cheating, and vandalism. The examining psychiatrist noted an arrest record which included pulling a fire alarm at age 16 and driving under the influence of alcohol four years ago.

The examining psychiatrist reviewed your health record and noted you had been admitted in September 1990 after a suicidal gesture. The evaluator commented on a past suicidal gesture evidenced by a "slash to the abdomen" which resulted in a psychiatric admission to a civilian hospital. Your more recent suicidal thoughts were because you wanted to get off your ship and be discharged from the Navy. In this regard, you said that you left your division officer a note, telling him to get you off the ship or you were going to kill yourself. The examining psychiatrist further noted that at the time of your first enlistment you informed personnel at the examining station of a prior psychiatric history but failed to disclose it on your medical history and denied any psychiatric problems or treatment.

The psychiatrist stated that a restraint team was standing by during the interview because of your intimidating and angry demeanor. You showed no remorse or empathy for your actions. The psychiatrist stated that when recommendations were made, you stated "the Navy just wants people to look real bad, to kick them out." You refused psychological testing and when advised of possible administrative separation processing you stated "I'm not crazy, I can't believe I'm here. If they want, we can make a big

ordeal. They would have to prove it. I'll hire a civilian attorney." You were advised that you could not view the FAC files because they it contained privileged information.

You were then diagnosed with a severe, unspecified personality disorder with anti-social, narcissistic, and sadistic features. The psychiatrist recommended that you be considered for an expeditious discharge due to personality disorder since you posed an ongoing risk to yourself and especially to your spouse.

On 19 July 1995, you were notified that discharge was being considered by reason of convenience of the government due to a personality disorder. You were advised of your procedural rights, declined to consult with counsel, and waived your right to an administrative discharge board (ADB). The discharge authority approved separation and you were honorably discharged on 2 August 1995 and assigned an RE-4 reenlistment code.

In its review of your application, the Board conducted a careful search of your service record for any mitigating factor which might warrant changing the reason for your discharge or the reenlistment code. However, no justification for such changes could be found. The Board noted that you request reinstatement with back pay and compensatory damages in the amount of one million dollars, and contend that you were involuntarily discharged and unfairly labeled as having a personality disorder. The Board also noted the statement provided by a psychiatrist from the Department of Veterans Affairs which states that based on his interview with you, he could not conclude there was sufficient evidence to confirm a specific personality disorder. The Board further noted the letters denying you employment, the court order modifying the restraining order and child support, and your rebuttal to the advisory opinion. You claim that both the psychiatrist at the time of your discharge and the author of the advisory opinion mentioned untruthful domestic violence incidents in their reports. You assert that you were never arrested for drawing a firearm or had a history of truancy in high school. The Board did note that the author of the advisory opinion quoted from the psychiatrist's handwritten evaluation that you were arrested for drawing a firearm, when the report actually stated "pulling a fire alarm." The Board could not determine where the psychiatrist obtained this information.

Despite your contentions to the contrary, the Board substantially concurred with the comments contained in the advisory opinion. In this regard, the Board notes that the psychiatric evaluation was a comprehensive assessment based on information reported by the FAC's psychologist, available medical records, you own personal history, and your mental status at the time of the interview. The information in this evaluation was based, for the

most part, on information you provided. Psychiatrists, in the Board's experience, do not write fiction, but very diligently document what a patient reports to them. The DVA psychiatrist, upon which you rely, also bases his opinion on what you reported to him. Further, the DVA psychiatrist did not see you under the same stressful conditions that clearly existed when you were observed and evaluated by the Navy psychiatrist. The Board believes there is sufficient evidence to conclude that you have a personality disorder. It is incumbent upon you to show that the Navy's diagnosis was invalid or erroneous. You have not shown to the satisfaction of the Board that the reason for your discharge should be changed.

Regulations authorize the assignment of an RE-4 reenlistment code to individuals who are discharged by reason of a personality disorder. Since the evidence of record indicates that you posed a risk for harm to yourself and especially to your wife, the Board concluded that the reenlistment code was proper and no change is warranted.

Once an individual's enlistment has expired, there is no basis for reinstatement, let alone in a pay grade to which he or she was never promoted. Neither the Board nor the Secretary of the Navy has authority to compensate an individual for damages. Any claim for damages must be pursued through a federal court of competent jurisdiction.

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

Enclosure

DEPARTMENT OF PSYCHIATRY
NAVAL MEDICAL CENTER
SAN DIEGO, CA 92134-5000

6 JAN 99

From: [REDACTED] LCDR(sel), MC,USNR

To: Chairman, Board for Corrections of Naval Records
Department of the Navy, Washington, DC 20370-5100

Subj.: Comments and recommendations regarding the request for correction of Naval records in the case of former [REDACTED]

Ref.: (a) Docket No: 7033-98

Encl.: (1) BCNR File
(2) Enlisted microfiche service record

1. Reference (a) requested a psychiatric specialty review of [REDACTED] request to have the diagnosis of Personality Disorder removed from his record and to be re-instated as an SK3 with back pay and compensatory damages. I have reviewed the enclosures and offer the following comments.

2. The only medical record available, a psychiatric evaluation done on 30 JUN 95 by [REDACTED] a psychiatrist at NAVSTA San Diego at that time, provides the following information:

- The member was referred for psychiatric evaluation by the Navy Family Advocacy agency in order to determine if he was a danger to himself or others and to assess his amenability to the Family Advocacy treatment program for spouse abuse.
- The member had been referred to Family Advocacy by his command out of concern about his severe impulse control problems and statements made by him which indicated a significant potential for violence.
- The member endorsed holding his wife down and causing bruises on her arms and legs, slapping her three or four times, pushing her onto a bed, and punching her once or twice.
- The evaluation refers to a Family Advocacy investigation that had substantiated physical abuse by the member toward his wife.
- The member endorsed the existence of a temporary restraining order initiated by his wife against himself about which he stated, "I break it every day."
- The evaluation refers to allegations of significant abuse by the member toward his wife, including an incident where he allegedly choked her and tried to stuff a condom down her throat.

- The evaluation describes a history of repeated suicide threats and includes reference to documentation in the form of several letters the member had written in which he admitted to physically abusing his spouse and threatened to kill her and himself.

- The evaluation refers to the members medical record which documents that he was admitted to a Navy psychiatry ward in September 1990 for suicidal ideation and notes his endorsement of a pre-enlistment psychiatric admission for a self-inflicted knife wound to his chest and abdomen in the context of suicidality, which he denied during his pre-enlistment evaluation.

-The member endorsed a history of truancy from highschool, having eight or nine physical altercations, impregnating a 23 year-old woman when he has age 18, and being sexually active with 100 women. The evaluation makes reference to his medical record showing documentation of numerous treatments for nonspecific urethritis and gonorrhea.

- The psychiatric evaluation makes reference to the member's medical record indicating numerous treatments for minor injuries related to alcohol intoxication.

- There is also a reference to his arrest record including arrests for drawing a firearm and driving under the influence.

3. The psychiatric evaluation describes the member as showing lack of remorse for violence toward his wife and concluded that he was not amenable to Family Advocacy treatment for spouse abuse due to his lack of remorse, sadism, and unwillingness to cooperate with treatment.

4. A review of his service record indicates the following:

-The member received counseling for alcohol-related incidents.

- The member received charges for violating the UCMJ Article 95: Escape from Custody and Article 14: Drunk Driving in October 1991.

- The member was sent to Anger Management classes following an altercation with his LPO.

5. A review of the letter from [REDACTED] MD, staff psychiatrist at the VAMC La Jolla California dated 7 JAN 98 indicates the following:

[REDACTED] obtained an office appointment with Dr. Flood for the purpose of re-evaluating his psychiatric diagnosis.

[REDACTED] stated to Dr. [REDACTED] that some of the information in the Navy psychiatric evaluation from June 1995 was inaccurate and exaggerated.

- [REDACTED] denied to Dr. [REDACTED] that he had a history of physical altercations with his wife or any one else with the exception of striking his wife three times. This material contradicts his statements recorded in the June 1995 evaluation.

- [REDACTED] denied to Dr. [REDACTED] that he had ever had any disciplinary problems, participated in any thefts or ever been arrested. This material contradicts his statements recorded in the June 1995 record.

[REDACTED] attributed his previous behavior to his immaturity and stated that he is a different person now.

6. Dr. [REDACTED] reports that [REDACTED] displayed behaviors that "could be construed as criteria for a Personality Disorder diagnosis", but concluded that there was "not enough evidence to confirm a specific or mixed personality disorder."

7. [REDACTED] was clearly unsuitable for Naval service. He would not have been allowed to enlist in the first place if he had been honest about his psychiatric treatment prior to his service. His discharge and re-enlistment code seem proper. While it may be of some debate whether or not [REDACTED] displayed character traits of sadism or narcissism, material in the records which are available for review clearly supports a history of Conduct Disorder as an adolescent and traits consistent with Antisocial Personality and Borderline Personality. I see no reason to change the characterization of his discharge.

[REDACTED]

[REDACTED]

LCDR MC USNR
STAFF PSYCHIATRIST