



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 9013-97

25 May 1999

[REDACTED]

Dear [REDACTED]

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 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.

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 enlisted in the Naval Reserve on 29 January 1994 and reported to active duty on 13 April 1994. The record shows that you received nonjudicial punishment (NJP) on 15 February 1996 for three specifications of failure to obey an order or regulation. The performance evaluation for the period 1 February 1995 to 15 January 1996 is adverse and you were not recommended for advancement or retention in the Navy. However, in March 1996 you agreed to remain on active duty for an additional period of 16 months.

On 6 June 1996 you received another nonjudicial punishment for violations of Articles 86 and 107 of the Uniform Code of Military Justice. The specifications read as follows:

... on or about 19 April 1996, without authority to go at the time prescribed to her appointed place of duty, to wit: the 0830 muster for a half day of work after her duty day.

... on or about 2 May 1996, with intent to deceive, make to Legalman First Class an official

statement, to wit: "I was never told about having to work a half day after our duty day," or words to that effect, which statement was false in that (she) was told by Boatswain's Mate First Class that the duty section had to work a half day after duty days in the presence of two other section members, and was then known by (her) to be so false.

The punishment imposed was an oral reprimand.

In your appeal of the NJP you contended that you were improperly punished for a violation of Article 86, UCMJ because one of the elements of that offense is that the individual had actual knowledge of the duty requirement. In addition, you pointed out that you were not feeling well and when you called in at 0530, you were told to go to medical. You said that you fell asleep and did not go to medical until 1800.

Concerning the false official statement charge, you stated that the BM1 could not be certain whether he informed you of the new requirement on the 11th or the 12th of April. You said that you were not at work on 12 April 1996 when everyone was informed of the change in duty requirements and therefore, it was not proven that you made a false official statement.

In his endorsement on your appeal the commanding officer stated, in part, as follows:

(She) bases her appeal on the grounds that the punishment is unjust because she was never informed of the required muster after a duty day. I strongly disagree. In reinterviewing the witnesses, I confirmed that (she) knew that she was required to report for duty on 19 April 1996. Even if she did not hear the order directly from BM1 ..., witnesses confirmed she knew because they discussed the muster among themselves when (she) stated her dissatisfaction with the extra half day work requirement. Whether or not she had special liberty is a moot point; she worked three full days and her duty day after her special liberty which gave her ample time to learn of the new work requirement ...

.. (She) chose not to muster at the require time and deliberately made a false statement to the LN1 regarding her knowledge of the required half day work day. Such blatant disregard for authority undermines the basis precepts of good order and discipline, especially in a division which employs several junior Sailors.

.. I believe the evidence reviewed and the subsequent interviews with the witnesses and the chain of command supports a finding of guilty regarding the charges and their specifications. The fact that (she) was informed and knew of the half day of work requirement and many witnesses verified this fact deems the punishment awarded as appropriate.

On 8 July 1996, the general court-martial convening authority dismissed the false official statement charge without explanation but concluded that the charge of failure to go to your appointed place of duty was appropriate. Since you received the minimum punishment allowed at NJP, the punishment was considered to be proportionate to the remaining offense.

In the evaluation for the period 16 January to 15 July 1997, an overall trait average of 3.17 was assigned and you were recommended for advancement and retention in the Navy. You were released from active duty on 12 August 1997 with your service characterized as honorable.

In your application you contend that since the GCM authority dismissed the false official statement charge, it proves that you did not know about the half day work requirement and the charge of failure to go to your appointed place of duty must also fall.

In reaching its conclusion to the contrary, the Board noted that there is no explanation of the GCM authority's action in dismissing the false official statement charge. However, it may be that the record did not convince him that you were actually told of the duty requirement by the BM1 as alleged in the specification. In this regard, the Board noted that the commanding officer also interviewed other witnesses who stated that you were aware of the requirement. The Board concluded that you had to know of the new work requirement and therefore the charge of failure to go to your appointed place of duty was appropriate. The Board further concluded that the punishment was not too severe for the offense committed.

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