



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 3395-99

8 October 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 5 October 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 reenlisted in the Navy on 13 December 1993. On 23 August 1995, a Navy drug laboratory reported that a urinalysis showed that you had used methamphetamines.

Based on the positive urinalysis, you were processed for an administrative discharge. An administrative discharge board (ADB) met on 25 February 1996 and found that you had committed misconduct due to drug abuse and recommended an honorable discharge.

On 28 February 1996 your counsel submitted a "statement of deficiencies" pointing out the lack of evidence showing that you had knowingly used methamphetamines, your many years of excellent service, and your limited duty status. The recorder for the ADB responded to the statement of deficiencies, in part, as follows:

.... In this case, not only was the presence of the controlled substances in question, methamphetamine, found in (his) body, the (ADB) considered the additional circumstantial evidence of (his) knowingly ingesting the drug. (He) was afforded an NCIS

polygraph test where he was asked whether he had abused methamphetamine or any other illegal drugs during the week in question. When (he) denied that he had abused drugs, the polygraph machine indicated that (he) was being deceptive in his answers. Clearly, the (ADB) had more than sufficient evidence to justify their unanimous finding of misconduct in this case.

The recorder noted that your many years of excellent service were considered by the ADB because an honorable discharge was recommended instead of a discharge under other than honorable conditions. Concerning the request for a medical discharge the recorder points out, in effect, that processing for discharge by reason of misconduct takes precedence over disability proceedings.

On 29 March 1996, the commanding officer recommended to the discharge authority that the findings and recommendation of the ADB be approved and forwarded a copy of the ADB, the statement of deficiencies, and the recorders response for action. On 23 April 1996 the discharge authority directed an honorable discharge by reason of misconduct and the assignment of an RE-4 reenlistment code. You were so discharged on 24 May 1996. At that time, you had completed 17 years, 1 month and 19 days of active service.

In your application you are requesting reinstatement in the Navy as if you were never discharged. Although not specifically stated, the Board assumed that you were essentially raising the same issues set forth in the statement of deficiencies.

The Board believed that the ADB record, which included the urinalysis and the polygraph showing deception, was sufficient to support the recommendation for discharge by reason of misconduct. Since a recommendation for an honorable discharge is rarely made in cases such as yours, it was clear to the Board that this was done because of your many years of excellent service. Finally, the Board noted that any service connected disabilities can be evaluated by the Department of Veterans Affairs. The Board concluded that the discharge was proper as issued and reinstatement in the Navy was not 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



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JLP:jlj
Docket No: 5685-99
8 September 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

[REDACTED]

REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Series of Documents
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that he reenlisted within three months of the expiration of his prior contract to establish entitlement to the payment of Lump Sum Leave (LSL).

2. The Board, consisting of Mr. Dunn, Swarens, and Ms. Davies, reviewed Petitioner's allegations of error and injustice on 8 September 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.



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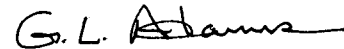
COMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that he was discharged and reenlisted on 15/16 August 1999 vice on or about 29/30 July 1999 to establish entitlement to the payment of 45 days LSL.

a. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

28 September 1999


W. DEAN PFEIFFER
Executive Director