



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

TRG  
Docket No: 8438-00  
30 July 2001

[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 24 July 2001. 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 1 February 1991 for four years in the rate of SM2 (E-5). You then served without incident for about 44 months. A special court-martial convened on 14 December 1994 and convicted you of drunk driving, drunk and disorderly conduct and assault. The court sentenced you to 45 days confinement at hard labor, forfeiture of \$400 pay per month for three months and a reduction in rate from SM2 to SM3 (E-4). In the performance evaluation for the period 1 April 1994 to 1 February 1995, you received an overall 3.8 evaluation. The evaluation indicates that at the time it was written, you were still an SM2. The evaluation does not mention the special court-martial conviction but states, in part, as follows:

... has been formally counseled on his reliability during this reporting period .... is recommended for advancement but is not recommended for retention in the U. S. Naval Service due to exceeding high year tenure.

Since you were evaluated as an SM2 and had less than 10 years of active service, the high year tenure regulations would only apply if you were an SM3 when the evaluation was written. As indicated, the evaluation shows that you were an SM2.

On 8 February 1995 a Court Memorandum was issued, apparently to report the 14 December 1994 special court-martial. It indicates that the sentence included a reduction in rate to SM3. You were honorably discharged on 9 March 1995. The DD Form 214 indicates that you were still an SM2. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

You contend, in effect, that you were improperly assigned the RE-4 reenlistment code because the performance evaluation shows that you were an SM2 and therefore, the high year tenure regulations did not apply in your case.

It appears that errors were made in your case and the performance evaluation and DD Form 214 should show you were reduced to SM3. However, even if it could be shown that you were properly an SM2, the regulations also require the assignment of an RE-4 reenlistment code to any individual convicted by a special court-martial within a year of being released from active duty. Since you have been treated no differently than others in this situation, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment code.

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