



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

CRS  
Docket No: 10826-02  
11 September 2003

[REDACTED]

[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 30 July 2003. 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 an advisory opinion on a prior case, dated 1 July 1999, from the Navy Environmental Health Center, a copy of which is enclosed.

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 21 September 2001 after more than 13 years of prior active service. The record reflects that you served well during these prior enlistments, attaining the rate of petty officer second class (SK2; E-5) and earning excellent to outstanding evaluations. You also received two Navy Achievement Medals.

You received nonjudicial punishment (NJP) on 8 March 2002 for use of cocaine based on a positive urinalysis. The punishment imposed consisted of a forfeiture of \$408.90 for seven days and a reduction from SK2 to petty officer third class (SK3; E-4). On 13 March 2002 you appealed the NJP, essentially contending that the positive urinalysis could have been caused by your sexual relationship with a woman who was using cocaine. In his endorsement of 2 April 2002, the officer in charge noted your theory of innocent ingestion but stated that "this theoretical possibility was insufficient to convince me that the results of

the urinalysis were in error." Your appeal was denied on 24 April 2002.

Subsequently, you were processed for administrative separation by reason of misconduct due to drug abuse. On 10 June 2002 an administrative discharge board (ADB) met to consider your case. The ADB considered evidence and testimony attesting to your excellent performance of duty and exemplary behavior. The ADB also considered testimony that you kissed and had sexual relations with your girlfriend the weekend before the urinalysis, and she had used cocaine on the Wednesday or Thursday before that weekend. Testimony was also received from the director of a Navy drug laboratory, who said that your particular theory of innocent ingestion was "an extremely unlikely scenario." He also testified that "I'm not sure that there is any level of cocaine that the female could take where there would be sufficient cocaine to be passed on to the male." In this regard, it is significant that the laboratory director assumed that your girlfriend used cocaine during the weekend when, in fact, she testified that she used it earlier in the week, thus making it likely that much of the drug was out of her system by the weekend.

Despite the foregoing testimony, the ADB found no misconduct and recommended retention, and this recommendation was approved. Therefore, you continue to serve on active duty in the rate of SK3.

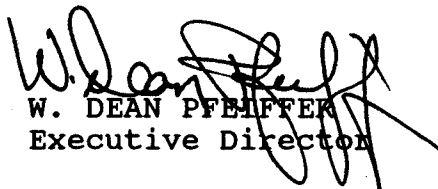
The Board noted your contentions concerning the imposition of NJP on 8 March 2002, especially the contention in your application, in the NJP appeal and at the ADB about innocent ingestion. However, the Board believed the testimony of the drug laboratory's director to the effect that the scenario you described would not have caused a positive urinalysis. The Board also noted that the NJP and the ADB are two separate proceedings, and a favorable result at the latter does not invalidate the former. This is especially true in your case since the commanding officer's decision at NJP that you had used drugs was reasonable, given the positive urinalysis; and since the ADB considered other evidence that justified the conclusion of the commanding officer, specifically, the testimony of the director of the Navy drug laboratory. In reaching its decision, the Board also noted paragraph three of the advisory opinion which states, in part, that "it is doubtful that enough cocaine could be transferred" by casual contact such as kissing to cause a positive urinalysis result. The Board saw no reason to disagree with the advisory opinion.

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 THE NAVY  
NAVY ENVIRONMENTAL HEALTH CENTER  
2510 WALMER AVENUE  
NORFOLK, VIRGINIA 23513-2617

5355

Ser CS-DL/22882  
01 JUL 1999

From: Commanding Officer, Navy Environmental Health Center,  
Norfolk, VA  
To: Chairman, Board for Correction of Naval Records, 2  
Navy Annex, Washington, DC 20370-5100

Subj: INQUIRY INTO THE URINALYSIS TEST RESULTS OF EX-QM1  
[REDACTED], USN, [REDACTED]

- Ref: (a) BCNR ltr AEG:jdh Docket No: 816-99 of 21 Jun 99  
(b) NAVDRUGLAB Jacksonville ltr 5355 Ser 00/1116 of  
28 Jun 99  
(c) NAVDRUGLAB Norfolk ltr 12736 09A/173 of  
12 Jul 94  
(d) Final Report of Dr. [REDACTED] of 25 May 95  
(e) M.A. ElSohly, J. Analytical Toxicology, 15, 1991,  
101.

1. The subject inquiry, reference (a), concerns a urinalysis test conducted at the Navy Drug Screening Laboratory (NDSL), Norfolk, VA between 23 Nov 93 and 02 Dec 93. Due to consolidation of Navy drug testing laboratories, NDSL-Norfolk closed at the end of FY 95. The records for NDSL-Norfolk were transferred to NDSL-Jacksonville for long term storage. Reference (b) was provided which contains copies of the testing data for the urine specimen in question. After a thorough technical and administrative review, the following is a synopsis of the test results for the subject inquiry.

In short, the urine specimen collected on 23 Nov 93, assigned local batch/specimen number 0285/02, SSN: 002-46-7672 was hand-carried the same day to NDSL-Norfolk. The specimen was assigned laboratory accession number (LAN) 522873. The initial screening test by radioimmunoassay (RIA) was performed on 29 Nov 93 and specimen 522873 tested presumptive positive for cocaine metabolites. A second portion of urine specimen 522873 was poured, screened a second time by RIA on 01 Dec 93, and tested presumptive positive for cocaine metabolites. A third portion of urine specimen 522873 was poured for the confirmation test. The

JUL 19 1999

Subj: INQUIRY INTO THE URINALYSIS TEST RESULTS OF EX-QM1  
[REDACTED] USN, [REDACTED]

confirmation test involves the chemical extraction from the urine matrix of the cocaine metabolite with the subsequent analysis of the extract by gas chromatography/mass spectrometry, (GC/MS). The GC/MS analysis on 01 Dec 93, of urine specimen 522873, identified specifically the cocaine metabolite, benzoylecgonine, at 136 ng/mL, above the DoD cutoff concentration of 100 ng/mL. The test result for 522873 was reported back to the submitting unit on 02 Dec 93 as confirmed positive for cocaine use. Upon request, a fourth portion of urine specimen 522873 was later poured and re-analyzed by GC/MS on 06 Jan 94. The retest of urine specimen 522873 reconfirmed the presence of the unique cocaine metabolite, benzoylecgonine. All four tests (2-RIA and 2-GC/MS) met all acceptance criteria for quality control samples and identification of a positive specimen by DoD/DoN standards.

2. The fact that urine specimen 522873 was tested during the time period when sporadic alterations of only RIA data occurred at NDSL-Norfolk, does not invalidate the testing results. The reports of the exhaustive internal investigation, reference(c), and from the independent forensic toxicologist, Dr. Huestis, reference (d), indicate that the testing batch containing 522873 was not involved in any quality control or other RIA data alterations. More importantly, both the GC/MS confirmation test and GC/MS confirmation retest consistently identified the presence of the cocaine metabolite, benzoylecgonine, meeting all scientific acceptance criteria.

3. Reference (a) indicated that the subject individual had an alleged casual contact of cocaine through kissing his girlfriend. It is doubtful that enough cocaine could be transferred to substantiate the concentration confirmed of the cocaine metabolite, benzoylecgonine, in the subject's urine the following day. Studies such as reference (e) indicate that casual contact of cocaine will not produce cocaine metabolite levels above the DoD screening test cutoff. It is highly improbable that the alleged scenario given by the subject individual could have resulted in a benzoylecgonine level high enough to reach the DoD cutoff.

4. As clarification, paragraph 3 of reference (a) pertaining to the involved laboratory individuals returning

Subj: INQUIRY INTO THE URINALYSIS TEST RESULTS OF EX-QM1  
[REDACTED], USN, [REDACTED]

to the laboratory to work, does not apply to the subject inquiry. The ex-service member's specimen was tested prior to the discovery of the sporadic RIA data alterations at NDSL-Norfolk. To reiterate, the urine specimen 522873 in question was not tested in a batch where the initial or second RIA test had data alterations. The design of the drug-testing program includes multiple testing by at least two different testing methods of presumptive positive specimens to preclude the false reporting of a specimen as confirmed positive for drugs.

5. Point of contact, Ms [REDACTED] Deputy Navy Drug Testing Program Manager, can be reached at commercial (757) 462-5515 or DSN 253-5515.

[REDACTED]  
By direction