



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5507-99

12 November 1999

[REDACTED]

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 10 November 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 18 May 1951 for six years as an SN (E-3). At the time of your reenlistment, you had completed nearly four years of prior active service.

The record reflects that you served without incident for more than six months. However, during the 18 month period from November 1951 to May 1953 you received two nonjudicial punishments (NJP) and were convicted by two summary courts-martial and a special court-martial. Your offenses consisted of six periods of unauthorized absence (UA) totalling about 67 days, missing ship's movement, and sleeping in after reveille.

On 17 September 1953, you were convicted by a second special court-martial of two periods of UA totalling about 79 days, from 20 April to 5 May and 20 May to 23 July 1953. You were sentenced to confinement at hard labor for three months, forfeitures of \$25 per month for three months, reduction in rate to SR (E-1), and a

bad conduct discharge. The convening authority approved the findings and the sentence but suspended the bad conduct discharge and reduction in rate for a period of six months. The Navy Board of Review affirmed the findings and sentence on 28 October 1953.

The record further reflects that you failed to return from liberty on 18 December 1953. You were reported UA and remained absent until your surrendered on board on 28 December 1953. On 8 January 1954, the bad conduct discharge suspended on 24 September 1953 was vacated and ordered executed. However, you were convicted by a fourth summary court-martial on 11 January 1954 for the foregoing 10 day period of UA. You were sentenced to confinement at hard labor for 11 days and a forfeiture of \$30. You received the bad conduct discharge on 29 January 1954.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education and the fact that it has been more than 45 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of two NJPs and convictions by four summary courts-martial and two special courts-martial. The Board noted the aggravating factor that you were given an opportunity to earn a discharge under honorable conditions when the discharge was suspended for a period of six months. However, you violated your probation by going UA again. Your total lost time due to UA and military confinement was about 291 days. You have provided neither probative evidence nor a convincing argument in support of your application. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. 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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MEH:ddj
Docket No: 5309-99
13 October 1999

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

REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 w/attachments
(2) BUPERS memorandum of 24 September 1999
(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 timely written request for conversion from spouse to former spouse coverage under the Survivor Benefit Plan (SBP).

2. The Board, consisting of Messrs. Dunn, Flood, and Swarens, reviewed Petitioner's allegations of error and injustice on 13 October 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

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. He executed a written request for conversion from spouse to former spouse SBP coverage, at the same level of coverage as previously elected, naming Patricia Kaufman as the beneficiary. His request was received by cognizant authority and became effective 8 February 1994, the day following the date of divorce.

b. The request was in compliance with a court order.

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

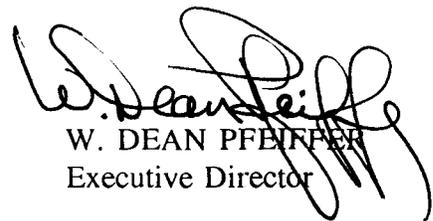
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings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

13 October 1999


W. DEAN PFEIFFER
Executive Director