



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

AEG
Docket No: 7359-02
27 January 2003

From: Chairman, Board for Correction of Naval Records
To: Chief of Naval Personnel

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Copy of BCNR ltr of 8Jan03
(2) Copy of Memorandum for the Executive Director, BCNR

1. In accordance with reference (a), the Board for Correction of Naval Records has reviewed allegations of error and injustice in Subject's naval record. The Board voted to deny relief, as indicated in enclosure (1).

2. The designated representative of the Assistant Secretary of the Navy for Manpower and Reserve Affairs has reviewed the proceedings of the Board and disapproved the action of enclosure (1). Enclosure (2) directs that corrective action be implemented. It has been determined that such corrective action should extend to the following:

a. Removal of all references in the record to the nonjudicial punishment of 30 July 1999 including, but not necessarily limited to, the Court Memorandum of that date.

b. Show that Subject was not reduced in rate from QM1 (E-6) to QM2 (E-5) on 30 July 1999 but continued to serve in the higher rate without interruption until his discharge on 20 August 1999.

c. Any material or entries inconsistent with or relating to the foregoing corrective actions should be corrected, removed or completely expunged from Subject's record, and no such entries or material should be added to the record in the future.

d. Any material directed to be removed from Subject's naval record should be returned to the Board, together with a copy of this letter, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Subject's naval record.

Regulations approved by the Secretary of the Navy require that Subject's naval record be corrected, where appropriate, in

accordance with the foregoing.

3. The Board has advised Subject and the Defense Finance and Accounting Service of the designated representative's action.

4. It is requested that this Board be furnished a copy of any correspondence relating to the action directed by enclosure (2).

ALAN E. GOLDSMITH
By direction



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

23 January 2003

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: PETITION OF [REDACTED]

I have reviewed the decision of the Board for Correction of Naval Records in the above referenced case. Pursuant to the provisions of 10 U.S.C. 1552 and the authority delegated to me by the Assistant Secretary of the Navy (Manpower and Reserve Affairs), I have reopened and reconsidered the subject decision.

Based upon the particular circumstances of this case, I have determined that relief should be granted. While the BCNR has addressed the arguments raised in the petition in a thoughtful manner, I find that the BCNR failed to place sufficient weight on the mitigating circumstances in this case. While I agree with the BCNR that the 29 June 1999 message from CINCLANTFLT did not create any enforceable rights in favor of the petitioner, it is my judgment, giving the petitioner the benefit of the doubt, that an injustice did occur and that relief should be granted.

Please take such action as is necessary to effect this decision.

[REDACTED]
Assistant General Counsel
(Manpower and Reserve Affairs)

Copy to:
[REDACTED]



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

CRS
Docket No: 7359-02
8 January 2003

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 7 January 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.

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 January 1995, after more than nine years of prior active service. You then served without incident until 26 July 1999, when you were apprehended by civil authorities and charged with driving under the influence of alcohol (DUI). It appears that you were then incarcerated for two days prior to being released to your command.

The record reflects that on 30 July 1999 you received nonjudicial punishment (NJP) for an unauthorized absence, apparently the two days you spent in jail, and drunk and reckless driving. The punishment imposed consisted of restriction for 60 days and reduction in pay grade from petty officer first class (QM1;E-6) to petty officer second class (QM2;E-5). On 20 August 1999 you received an honorable discharge by reason of alcohol rehabilitation failure.

On 25 October 1999 you were convicted by civil authorities of DUI on 26 July 1999. The sentence imposed consisted of a fine of \$1000, confinement of four days, two of which had already been

served, and suspension of your driver's license for 90 days.

The Board noted your contention that the NJP should be removed from your record given the message of 29 June 1999 from the Commander in Chief, Atlantic Fleet. That message reads in part, as follows:

If a civil adjudication takes place prior to disciplinary or court-martial action, (the Manual of the Judge Advocate General {JAGMAN}) is clear: Prior permission of higher authority must be obtained before the military charges can be tried by court-martial or be the subject of NJP...

Because (the JAGMAN) applies only to cases in which civil authorities have already adjudicated the matter, and not to cases yet to be adjudicated (i.e., where charges are referred or a case goes to NJP prior to civil adjudication). There may be a temptation to engage in a "race to the courthouse" and to convene a court-martial or conduct NJP before civil authorities prosecute the case. Such action is to be avoided. For cases in which both civil and military authorities have become involved, and in which civil authorities have first assumed an interest prosecuting the case, commanders should not take UCMJ action unless civil authorities concur or permission is granted by the officer exercising GCM jurisdiction over the command. This policy is based upon the principle of comity between the Federal government and state/foreign governments and is not intended to confer additional rights upon the servicemember. This policy also efficiently coordinates use of Federal/State resources.

However, the Board concluded that the foregoing message does not warrant corrective action in your case. First, either the civil authorities or the general court-martial convening authority may have granted permission to the commanding officer to impose NJP. Further, the message did not confer any right upon you not to have NJP imposed, it only set forth a policy to efficiently coordinate resources. Finally, the message only applies to disciplinary actions taken for the same misconduct for which the individual is pending charges in the civil courts. You, however, received NJP not only for DUI but also for UA. Therefore, the message did not apply to your case.

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