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

TRG
Docket No: 7500-98
2 September 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 31 August 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.

Enclosed is a copy of the Board's letter, dated 13 July 1998, informing you that your application was denied. The case is being reconsidered based on your submission of your letter to the Navy Military Personnel command, dated 3 May 1988. You contend in that letter that you were never provided the form to request an administrative discharge board (ADB), your verbal request for such a board was ignored, and you could not resolve this issue because of your hospitalization following a suicide attempt. You point out that if your case had been considered by the ADB, you could have presented an evaluation from the Fitzsimons Army Medical Center. The details of your service are set forth in the Board's 13 July 1998 letter and will be addressed only as they relate to the issues which resulted in reconsideration of your case.

The evaluation from Fitzsimons Medical Center noted that you were HIV positive and found a major situational reaction in response to your knowledge of the HIV infection which was manifested by suicide attempts and present anxiety with concomitant depression. It was recommended that you be returned for follow-up at a Navy medical center in three months for staging and reevaluation. Subsequently, you were seen in a Navy psychiatric clinic on three

occasions and were found to have a personality disorder.

The evaluation from Fitzsimons Medical Center was forwarded to the discharge authority as enclosure (10) to the commanding officer's letter of 3 May 1988, which recommended your discharge. Therefore, it was considered as part of the discharge package. The Board noted that there is nothing in that evaluation or any of the psychiatric evaluations done by the Navy to show that you were not responsible for your actions. Therefore, disciplinary and administrative separation actions appear to have been justified in you case.

Concerning the issue that you were improperly denied the opportunity to present your case to an ADB, the Board noted that the commanding officer stated in his recommendation for discharge, in part, as follows:

> ... Upon giving member the allotted time to respond to the Notification of an Administrative Board Procedure proposed Action, member failed to return the original Statement of Awareness, and Request for, or Waiver of, Privileges, therefore waiving all rights.

In addition, the commanding officer stated in his endorsement to your letter of 21 June 1988, in part, as follows:

> Subject member was properly informed of his rights concerning his administrative discharge, and he signified his understanding of those rights on the "Notice of an Administrative Board Procedure Proposed Action" dated 17 November 1997 .... In accordance with normal practice the "Statement of Awareness and Request for, or Waiver of Privileges" was given to him at that time so that he could take it to his meeting with counsel. An appointment with defense counsel was made for him; it is not known if he kept that appointment. He was also specifically told several times to complete the "Statement of Awareness" if he desired a board.
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> ... As the dates in his letter show, his medical treatment and unauthorized absences helped delay the processing of his discharge. His processing has not been conducted hastily in derogation of his rights. To date, he has still never submitted a "Statement of Awareness" requesting a board.

The Board concluded that your failure to submit the "statement of awareness" was properly considered as a waiver of your right to an ADB. The Board noted that the facts of your misconduct are not in dispute and you could only have presented a case in extenuation and mitigation. The Board concluded that your

discharge was proper as issued and no change is 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

Enclosure