

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JIM A. TURNER,
MAY 14 1998

Clerk. U.S. District Court

Plaintiff,

District of Columbia

v

Civil Action

No. 97-1653 (PLF)

UNITED STATES NAVY, *et al.*,

Defendants.

ORDER

On April 10, 1998, this court granted plaintiffs Rule 56(f) motion in part and denied it in part, holding that plaintiff was entitled to limited discovery in this case. The Court then ordered plaintiff to file a supplemental memorandum "explaining precisely what facts he seeks to discover and how those fact are necessary in order to oppose defendants' motion for summary judgment." Memorandum Opinion and Order at 4.

Plaintiff filed his supplemental memorandum on April 22, 1998. Despite the Court's Order, it included no explanation of why the facts plaintiff seeks to discover

are necessary or essential to oppose defendant's summary judgment motion. Nevertheless, the Court concludes that plaintiff is entitled to the majority of the discovery he seeks, especially in light of defendants' arguments regarding plaintiff's claims that focus on the alleged impartiality, bias and lack of due process that affected the proceedings leading to plaintiff's discharge from the Navy. Upon consideration of plaintiff's supplemental memorandum and defendants' response, it is hereby

ORDERED that on or before June 26, 1998, defendants shall produce to plaintiff, each in a separate file or box, the following documents; these requests are not to be read as interrogatories or requests for admission; documents are to be produced, nothing more:

1. The complete and official administrative record for Plaintiffs Article 15 non-judicial punishment ("NJP") proceeding aboard the USS ANTIETAM on May 3, 1994, and Plaintiff's appeal therefrom.

2. The complete and official administrative record for Plaintiffs administrative separation proceedings, as initiated aboard the USS ANTIETAM on May 3, 1994 (including, without limitation, any pre-hearing notices or charging sheets; the official hearing transcript for the May 22, 1994 hearing ; all exhibits submitted

by the parties; any post-hearing recommendations or rulings; any letters of deficiency and endorsements thereon; and any other correspondence, submissions, rulings or documents that are a part of such administrative record).

3. The complete and official administrative record for plaintiff's petition of

December 20, 1994 to the Bureau for Correction of Naval Records ("BCNR"), which resulted in the

BCNR's written opinion of April 9, 1996.

4. Documents not responsive to the above requests (Nos. 1-3) that

were compiled by defendants and before the defendants or that may have been considered or consulted

by the Navy or the NJP Authority, the NJP Appeal Authority, the Commanding Officer of the USS

ANTIETAM, the Administrative Discharge Board, the BCNR, or Deputy

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Assistant Secretary of the Navy, Karen S. Heath, in connection with any of the administrative proceedings described in the above requests (Nos. 1-3).

5. A complete copy of the version of the DoD Directive No. 1332.14, including any and all attachments and enclosures thereto, that defendants and their designees have applied to plaintiff at each stage of the proceedings at issue (together with any and all

guidelines that may have been considered or consulted by any official or representative of defendants in the course of, or in connection with, defendants' administrative proceedings against plaintiff.

6. Documents that set forth or explain the procedures that were in effect at any time during 1994 regarding the procedures for the conduct of non-criminal investigations of allegations into serious minor offenses aboard the USS ANTIETAM.

7. Documents that set forth or explain the procedures that were in effect at any time between May 1, 1994 and December 31, 1996 regarding the correction of military records.

8. Documents that contain findings of misconduct on the part of, or that report on any disciplinary, probationary, or legal actions of any kind, whether military or civilian, against any of the following individuals: (a) Petty Officer John T. King, (b) Seaman Apprentice Lee J. Poore, (c) Seaman Apprentice Chad M. Maurer, (d) Captain Joe Lee Frank, (e) Executive Officer Michael D. Palatas, or (f) Chief Master-at-Arms Charles M. Clanahan.

9. Documents (including, without limitation, any notes, recordings, memoranda, or reports of any witness interviews) that reflect any fact-finding inquiry or investigation, whether formal or informal, regarding plaintiff or any other member of the crew

of the USS ANTIETAM who either served as, or was under consideration to serve as, a witness for the Navy in Plaintiff's NJP or administrative separation proceedings, as described in the requests above (Nos. 1-2).

10. Documents that reflect or refer to any representation made at any time to Petty Officer John T. King, Seaman Apprentice Lee J. Poore, or Seaman Apprentice Chad M. Maurer regarding any benefit or favorable consideration that any such individual would or might receive in return for the presentation of any allegation or testimony against plaintiff (including, without limitation, any suggestion of any favorable treatment in the consideration of any transfer request, any application for early termination of Naval service, or any possible investigation or disciplinary action against such individual).

11. Documents that indicate the date, circumstances and conditions for the release from or termination of service (either aboard the USS ANTIETAM or in the Navy generally) of Petty Officer John T. King, Seaman Apprentice Lee J. Poore, or Seaman Apprentice Chad M. Maurer, including, without limitation, any such naval message traffic, interim or final processing papers, transportation requests or approvals, transfer applications, or "check-out" sheets.

12. A complete and unredacted copy of any portions of the Captain's Mast Log for May 3, 1994 and any documents that indicate (a) the time of the commencement and conclusion of plaintiff's NJP proceeding on May 3, 1994; (b) the date and time of the ANTIETAM's decision to process plaintiff for an administrative discharge from the Navy; and/or (c) the date and time of the ANTIETAM's decision (or request or order for helicopter service) to transfer plaintiff off of the ship for the alleged misconduct at issue in this case; it is

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FURTHER ORDERED that to the extent that a protective order is necessary with regard to the information plaintiff seeks regarding certain crew members of the USS ANTIETAM, the parties shall file a joint proposed protective order by May 29, 1998; it is

FURTHER ORDERED that on or before May 29, 1998, defendant shall file a complete and unredacted copy of R.1393, which plaintiff understands to be a memorandum prepared by Lieutenant Commander Eric Geiser dated May 28, 1994, for *in camera* review so that the Court may determine whether the unredacted memorandum contains information protected by the attorney-client privilege; it is

FURTHER ORDERED that defendant shall file any supplements to the administrative record with the Court by June 26, 1998; and it is

FURTHER ORDERED that plaintiff shall file his cross motion for summary judgment and/or opposition to defendant's motion for summary judgment by July 31, 1998; defendant shall file its opposition to plaintiff's cross motion and reply to plaintiff's opposition by September 4, 1998; plaintiff shall file its reply to defendant's opposition by September 25, 1998.

SO ORDERED.

PAUL L.
FRIEDMAN
United States District
Judge

DATE: 5/13/98