



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

JRE
Docket No. 04702-06
19 July 2007

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 19 July 2007. 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.

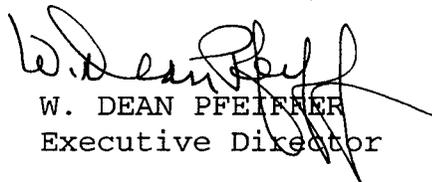
The Board rejected your contention to the effect that you were suffering from a service-incurred cognitive disorder on 17 October 1983, when you were discharged by reason of misconduct based on your record of four nonjudicial punishments. The fact that the Department of Veterans Affairs awarded you a total disability rating such a disorder in February 2006 is not probative of the existence error of injustice in your record because you obtained that rating by making false statements concerning the alleged injuries you sustained when struck by a bus on 31 October 1977. Your naval record shows that you did not

experience loss of consciousness or sustain significant injuries in the accident, and you were not hospitalized for an extended period as you advised VA officials. In addition, your record contains a report of medical history dated 2 September 1980 in which you denied having a history of head injury, periods of unconsciousness, and hospitalization.

There is no indication in your record that you were unfit for duty by reason of physical disability on 17 October 1982. You would not have been entitled to disability separation or retirement at that time even if you had been unfit for duty, because a discharge by reason of misconduct takes precedence over disability evaluation processing. Accordingly, and as you have not demonstrated that it would be in the interest of justice to upgrade the characterization of your second period of service, 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