



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

SMW

Docket No: 10056-06
5 April 2007

[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 4 April 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 28 December 1989 you enlisted in the Navy at age 20 and served without incident until 9 August 1990, when you received nonjudicial punishment (NJP) for a seven day unauthorized absence (UA) and assault. You were counseled on that same date regarding deficiencies in your performance and conduct, and warned that further infractions could result in disciplinary action or an other than honorable discharge. However, on 18 December 1990 suspended punishment from the NJP was vacated due to continued misconduct, and on 19 December 1990 you received NJP for two instances of failure to go to your appointed place of duty and failure to obey a lawful order. Once again, you were counseled regarding deficiencies in performance and conduct, and warned that further infractions could result in disciplinary action or discharge. On 13 February 1991 you received NJP for assault consummated by battery, and on 25 February 1991 you were convicted by summary court-martial (SCM) of assault consummated by battery, assault upon a superior petty officer, and disrespect.

On 3 March 1991 your commanding officer (CO) initiated administrative separation by reason of misconduct due to commission of a serious offense. In connection with this processing, you acknowledged that separation could result in an other than honorable discharge and elected to have your case heard by an administrative discharge board (ADB). On 5 March 1991 the ADB found that you had committed misconduct by reason of commission of a serious offense, and recommended an other than honorable discharge. On 25 April 1991 you began a period of UA. On 2 May 1991 the separation authority approved the recommendation and directed an other than honorable discharge by reason of misconduct due to commission of a serious offense. On 8 May 1991 the period of UA ended, but it appears that no disciplinary action was taken. On 29 May 1991 you were separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and the 15 years that has passed since your discharge. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct that continued even after you were warned that further infractions could result in disciplinary action or an other than honorable discharge. Therefore, the Board concluded that the 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