



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

CRS
Docket No: 10093-06
1 February 2008

[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 16 January 2008. 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 enlisted in the Marine Corps on 25 March 1985. You received two nonjudicial punishments and were convicted by a summary court-martial. The offenses included disobedience of a lawful order, use of provoking words, and unauthorized absences.

On 29 January 1987 your commanding officer recommended that you be separated with a discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. When informed of the recommendation for separation, you waived the right to consult with counsel and to present your case to an administrative discharge board (ADB). After review by the discharge authority, the recommendation for separation was approved and on 26 February 1987 you were separated with a discharge under other than honorable conditions.

In its review of your application the Board carefully considered your contentions that you waived your right to an ADB without the benefit of counsel and that you were told that your discharge would be automatically upgraded after a period of time. The

Board concluded that those factors are insufficient to warrant recharacterization of your discharge. In this regard, the record is clear that you waived the right to consult with counsel. In addition, there is no law or regulation that provides for the automatic upgrade of a discharge after the passage of a specified period of time. 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