



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

SMW

Docket No: 5523-07
24 January 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 23 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 24 April 1989, you enlisted in the Navy at age 23. On 13 October 1989 and 25 January 1990, you had nonjudicial punishment (NJP) for two instances of unauthorized absence (UA) totaling about five days. On 7 February 1990, you were counseled for having established a pattern of misconduct, and warned that further infractions could result in disciplinary action or administrative separation. On 15 May 1990, a medical evaluation stated that you complained about having flat feet and abdominal pain. The evaluation stated that both conditions existed prior to enlistment and that you had suffered a gunshot wound to the kidney three years earlier, but your kidney was normal. The evaluation concluded by recommending a fitness for duty determination. On 16 May 1990, podiatry recommended six months of limited duty for the purposes of awaiting determination of your fitness for duty. On 3 August 1990, you had NJP for two

instances of willful disobedience of a lawful order, disorderly conduct, absence from your appointed place of duty, and disrespect.

On 3 August 1990, your commanding officer initiated administrative separation by reason of misconduct due to a pattern of misconduct and commission of a serious offense. In connection with this processing, you acknowledged that separation could result in an other than honorable (OTH) discharge and objected to discharge, but waived the right to have your case heard by an administrative discharge board (ADB). On 9 August 1990, the separation authority approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 31 August 1990, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. The Board also considered your contention that you were going to get a medical discharge until you were falsely accused of causing an international incident. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge or changing the reason for discharge, due to your misconduct that continued even after you were counseled and warned that further infractions could result in administrative separation. Regarding your contentions, there is no evidence in the record to show that you were going to receive a medical discharge; and individuals awaiting a fitness for duty determination are still subject to the Uniform Code of Military Justice. Furthermore, the record does not show that you were discharged due to one incident, but three, which is why your reason for discharge is misconduct due to a pattern of misconduct. Finally, the Board noted that you waived the right to have your case heard by an ADB, your best opportunity for retention or a more favorable characterization of service. Therefore, the Board concluded that the discharge was proper as issued and no changes are 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