



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

TRG
Docket No: 6009-07
15 October 2008

[REDACTED]

[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 7 October 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.

You were commissioned in the Marine Corps on 10 June 1988 and served in an excellent manner for about eight years. During this period you were promoted to captain. All though the date is unavailable it appears that sometime in 1996 or early 1997 you received nonjudicial punishment for adultery and sodomy. The details of the offenses are not filed in your record. Subsequently, a Board of Inquiry (BOI) found that the evidence supported the allegation of misconduct and recommended a general discharge. After review by the discharge authority, a general discharge by reason of unacceptable conduct was directed and you were so discharged on 3 July 1997.

In his brief, your counsel points out that there was a drinking party on the beach with at least one female sailor involved. Apparently someone took pictures during the festivities. Counsel contends that the camera angle falsely suggested that there was sexual activity on the beach and he believes that the Admiral overreacted when he became aware of the pictures. He points out that three of the eight officers present received nonjudicial punishment. Finally counsel contends that you were advised to plead guilty.

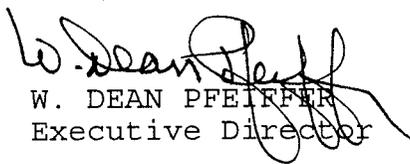
In its review of your application the Board carefully weighed all

potentially mitigating factors, such as excellent service prior to the incident at issue and your claim of a successful civilian career since discharge. The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your nonjudicial punishment for a serious offense. Although the record is incomplete and all of the details are not available, it is clear that you were present during the incident. Additionally the subsequent BOI reviewed the facts and concluded that misconduct had occurred. Accordingly, the Board found that there was a basis for the imposition of NJP and discharge processing in your case. 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