



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

SJN
Docket No: 09947-07
26 November 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 25 November 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.

You enlisted in the Navy and began a period of active duty on 5 August 1986 at age 17. You served without incident until 28 October 1990, when you were arrested and charged with second degree murder, and three felony counts of assault with a firearm. Subsequently, you were found guilty of those charges and sentenced to 15 years to life for murder, and nine years, that were to run concurrently, for the three counts of assault with a firearm.

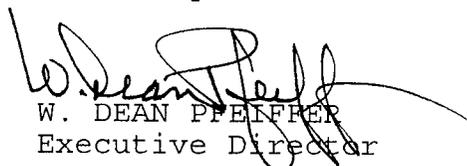
Based on this conviction you were processed for an administrative discharge by reason of misconduct due to civil conviction. On 8 October 1991 you were notified of this pending administrative separation action and elected to consult counsel and have your case heard by an administrative discharge board (ADB).

On 26 November 1991, an ADB found that you had committed misconduct due to civil conviction, and recommended that you receive a suspended other than honorable (OTH) discharge. However, your commanding officer (CO) forwarded your case to the discharge authority concurring with the findings of the ADB concerning misconduct, but that the separation should not be suspended, and that you should be separated with an OTH discharge. On 20 February 1992, the discharge authority concurred with your CO and directed that you be separated under other than honorable conditions by reason of misconduct due to civil conviction. You were so discharged on 28 February 1992.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant any change in your discharge given you civil conviction and ensuing incarceration for very serious offenses. Further, you are advised that there is no provision in the law or Navy regulations that allow for recharacterization automatically due solely to the passage 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