



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

TJR
Docket No: 11345-07
19 November 2008

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 18 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 on 3 August 1976 at age 18 and began a period of active duty on 1 September 1976. You served for a year and six months without disciplinary incident, but during the period from 8 March to 3 November 1978 you received nonjudicial punishment (NJP) on five occasions. Your offenses were three specifications of disobedience, disrespect, five specifications of dereliction of duty, three periods of absence from your appointed place of duty, and a three day period of unauthorized absence (UA). On 15 December 1978 you were convicted by summary court-martial (SCM) of a 66 day period of UA and sentenced to a \$200 forfeiture of pay. You were also recommended for an administrative separation.

On 6 February 1979 you received NJP for a 44 day period of UA and were awarded extra duty for 45 days and a \$400 forfeiture of pay.

On 7 February 1979 you were notified of pending administrative discharge action by reason of misconduct due to frequent involvement of a discreditable nature with military or civilian authorities. After consulting with legal counsel, you waived your right to present your case to an administrative discharge board (ADB). However, you submitted a written statement in which you provided an explanation and an apology for your misconduct, and requested a general discharge. Nonetheless, your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military or civilian authorities. The discharge authority approved this recommendation and directed separation under honorable conditions by reason of misconduct and on 23 February 1979 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to have your discharge upgraded so that you may obtain employment. It also considered your assertion that you went UA because you were lied to and denied leave. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct, which resulted in six NJPs and a court-martial conviction, and included two lengthy periods of UA. Finally, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. 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