



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

SJN
Docket No: 00061-07
11 December 2008



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 9 December 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 Marine Corps and began a period of active duty on 5 August 1986 at age 17. During the period from 14 December 1973 to 1 March 1974, you received four nonjudicial punishments (NJP's) for disobedience, three periods of unauthorized absence (UA), and four instances of absence from your appointed place of duty.

On 20 January 1975, you began a period of UA. While in a UA status, you were apprehended by civil authorities and charged with robbery on 31 January 1975. Subsequently, on 10 April 1975, you were convicted of common law robbery and sentenced to a term not to exceed four years in jail.

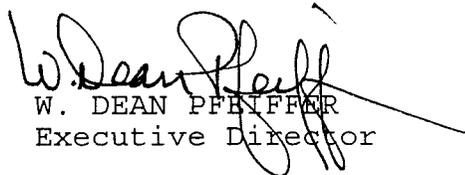
Based on this conviction you were processed for an administrative discharge by reason of misconduct due to your civil conviction. On 23 May 1975, you were notified of this pending administrative separation action and elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). On 17 June 1975, your commanding officer (CO) forwarded your case to the commanding general recommending separation.

On 21 August 1975 an ADB unanimously found that you had committed misconduct due to the conviction by civil authorities, and recommended that you receive an undesirable discharge. Subsequently, the discharge authority concurred with the ADB and directed that you receive an undesirable discharge due to misconduct on the specific basis of the civil conviction. You were so discharged on 30 September 1975.

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 your four NJP's, civil conviction, and ensuing incarceration for a very serious offenses. Further, it appears that the Department of Veterans Affairs (DVA) office in New York upgraded your discharge status in order for you to receive DVA benefits only, and does not change or upgrade your characterization of service. 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