



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

JRE
Docket No. 00378-08
22 August 2008

[REDACTED]

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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 21 August 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.

The Board found that you enlisted in the Marine Corps on 1 June 1990. It appears that your enlistment was fraudulent, in that you procured it by concealing your extensive pre-service history of evaluation and treatment of disqualifying mental disorders. You were discharged by reason of misconduct/pattern of misconduct on 11 October 1991, with a discharge under other than honorable conditions. The discharge was based on your record of three instances of nonjudicial punishment for a variety of offenses, to include multiple unauthorized absences, insubordinate conduct, and failure to obey lawful orders.

On 2 June 1994, the Department of Veterans Affairs (VA) determined that your naval service was performed under dishonorable conditions, and that you were barred from receiving benefits administered by that agency. The VA did not determine that you were insane when you committed the offenses which resulted in your discharge.

The Board was not persuaded that you were unfit for duty by reason of physical disability that was incurred in or aggravated beyond natural progression by your period of naval service. It noted that you would not have been entitled to disability separation or retirement even if you had been unfit, because your discharge by reason of misconduct would have taken precedence over disability evaluation processing. In addition, the Board had no basis for concluding that you lacked mental responsibility for your actions.

In view of the foregoing, and as you have not demonstrated that it would be in the interest of justice for the Board to upgrade your discharge, 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