



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

SMS
Docket No: 406-08
28 August 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 27 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.

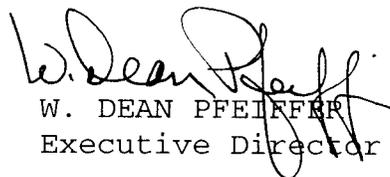
On 24 May 1988, you enlisted in the Navy at age 23. On 20 October 1988, you were counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an other than honorable discharge. On 21 October 1988, you had nonjudicial punishment for failure to go to your appointed place of duty and two instances of failure to obey a lawful order. On 1 March 1989, you began an unauthorized absence (UA) that ended on 6 March 1989, a period of about five days. On 17 April 1989, you began a period of desertion when you departed your command knowing that you were scheduled for a trial by court-martial on 20 April 1989. On 3 May 1989, your period of desertion ended when you were apprehended by civilian authorities. On 2 June 1989, you were convicted by a special court-martial (SPCM) of two instances of use of cocaine, a 16 day period of desertion, and a five day period of UA. The

sentence included confinement, forfeitures of pay, reduction in rank, and a bad conduct discharge (BCD). On 3 August 1989, you began a period of UA. On 1 November 1989, you were apprehended by civilian authorities and subsequently convicted in civilian court of selling narcotics, and possession of crack cocaine and narcotics. The sentence included confinement, for which you were given credit for time served. On 5 March 1990, you were returned to military authorities after being in a UA status for about 185 days. It appears that no disciplinary action was taken for the 185 day period of UA and a portion of your court-martial sentence was partially suspended. After the BCD was approved at all levels of review, on 19 July 1990, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth, the passage of time, and medical documentation that you submitted. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. You are advised that there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. 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