



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

JRE

Docket No. 00707-08
25 November 2008

[REDACTED]

[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 20 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy Reserve on 18 October 2002 for a term of six years. You underwent psychiatric evaluation on 8 December 2004 and were given a diagnosis of major depressive disorder, recurrent, moderate, without psychotic features. You were considered fit for duty at that time. In a letter dated 15 February 2005, a civilian psychiatrist indicated that you were hospitalized for psychiatric treatment on 12 February 2005 following an "altercation". On 29 August 2005 you were convicted by special court-martial, pursuant to your pleas of guilty, of being disrespectful in language to a superior chief petty officer, and

assaulting a chief petty officer by striking at him with a retractable baton device. Both offenses occurred on 12 February 2005. The court sentenced to reduction to pay grade E-5, confinement for ninety days, and forfeiture \$500.00 pay per month for three months.

On 27 September 2005, after being advised by your rights in connection with your proposed discharge by reason of misconduct/commission of a serious offense, you declined to consult with counsel, and waived your rights to appear before an administrative discharge board (ADB), submit statements to an ADB or the discharge authority in lieu of an ADB, and representation before an ADB by qualified military counsel or civilian counsel at your own expense. The recommendation for discharge was approved by the separation authority, who directed that you be discharged by reason of misconduct/commission of a serious offense, with a discharge under other than honorable conditions. You were so discharged on 13 November 2005.

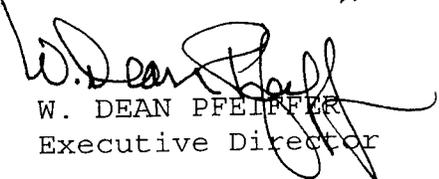
The Board concluded that the available evidence is insufficient to demonstrate that you were unfit for duty by reason of physical disability at the time of your discharge. It noted that you would not have been entitled to disability separation or retirement even if you had been unfit for duty at that time, because your discharge by reason of misconduct would have taken precedence over and precluded disability processing. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board did not consider whether your discharge should be upgraded to general or honorable since you have not exhausted an available administrative remedy by applying to the Naval Discharge Review Board (NDRB). You may apply to NDRB by submitting the attached DD Form 293.

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

Enclosure