



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

TJR  
Docket No: 2049-08  
13 January 2009

[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 13 January 2009. The names and votes of the members of the panel will be furnished upon request. 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.

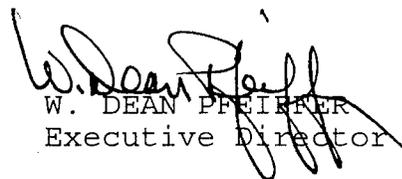
You reenlisted in the Marine Corps on 20 July 1995 and served without disciplinary incident until 28 March 1997, when you were convicted by summary court-martial (SCM) of sodomy with an underage female and wrongful participation in an indecent act with an underage female. You were sentenced to restriction for 60 days, reduction to paygrade E-5, and a \$1,154 forfeiture of pay. The paygrade reduction and forfeitures were suspended for six months.

Subsequently, after consulting with legal counsel, you waived your right to present your case to an administrative discharge board (ADB). You were then notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. Your commanding officer recommended an other than honorable discharge by reason of misconduct due to commission of a serious offense. The discharge authority approved this recommendation, and on 2 May 1997 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service, post service conduct, and explanation regarding your misconduct which resulted in SCM. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. Finally, you were given an opportunity to defend yourself, but waived your procedural rights to present your case to an ADB. Accordingly, your application has been denied.

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