



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

TRG
Docket No: 2576-08
17 December 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 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 26 January 1978 at age 19. During the period from 22 June to 4 October 1979, you received nonjudicial punishment on two occasions. Your offenses were theft from the Navy Exchange and an unauthorized absence of less than 24 hours. On 15 November 1979 you were counseled and warned that continued misconduct could lead to a discharge under other than honorable conditions. A special court-martial convened on 13 February 1980 and convicted you of wrongful appropriation of a motorcycle. The sentence of the court included confinement at hard labor, forfeitures of pay and a reduction in rate.

Based on the foregoing record you were processed for an administrative discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. At that time, you signed an agreement to waive having your case heard by an administrative discharge board in exchange for a recommendation for a general discharge. In accordance with this agreement, the commanding officer recommended a general discharge and on 10 April 1980 you were discharged. The character of service, separation authority and separation code blocks (blocks 25, 26 and 28) of the DD Form 214 issued at that time were left blank pending approval of your discharge by the separation authority. After review, the separation authority directed a

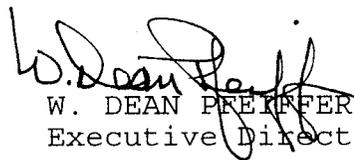
general discharge by reason of substandard personal behavior. Since you were already discharged, your command issued two DD Form 215's to fill in the information in the blocks which were left blank. Since you did not provide a copy of the DD Form 215 showing that you were discharged with a general discharge under honorable conditions, a copy of that DD Form 215 is enclosed.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and contention that you were told that your discharge would be automatically upgraded to honorable after six months. However, there is no provision in the law or regulations which would require recharacterization of a discharge based solely on the passage of a period of time. The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your record of misconduct. Further, the Board believed that you were fortunate to have received a general discharge since a discharge under other than honorable conditions could have resulted based on your record of misconduct. The Board concluded that the general 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

Enclosure