



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

SMS
Docket No: 2601-08
20 November 2008

[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 19 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.

On 7 April 1976, you enlisted in the Navy at age 18. On 28 September 1976, you had nonjudicial punishment (NJP) for damaging non-government property and assault. On 30 September 1976, you were convicted in civil court of second degree burglary. Your sentence included a brief period of correctional custody, payment of attorney fees, and restitution. On 6 December 1976, you began a substance abuse program for alcohol addiction. On 12 July and 23 November 1977, you had NJP for two instances of unauthorized absence (UA), breaking restriction, and possession of marijuana. On 28 February 1978, a medical evaluation diagnosed you as being drug dependent. On 6 March 1978, you were authorized substance abuse treatment. On 7 March 1978, you had NJP for use of phencyclidine (PCP) and being incapacitated for the proper performance of your duties. On 14 April 1978, you began a period of UA while you were undergoing treatment at the Navy Drug Rehabilitation Center. At that time, you were dropped from treatment and not recommended for further treatment. On 23 May 1978, you surrendered after being in a UA status for about 39 days. On 30 May 1978, you were convicted by a summary court-martial of the 39 day period of UA.

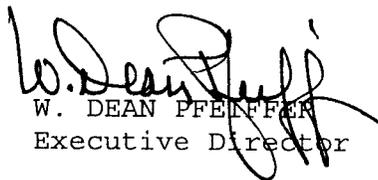
On 29 June 1978, your commanding officer initiated administrative separation by reason of misconduct due to drug abuse. In connection

with this processing, you acknowledged that separation could result in an other than honorable (OTH) discharge and waived the right to have your case heard by an administrative discharge board (ADB). On 23 August 1978, the separation authority approved the separation recommendation and directed an OTH discharge by reason of misconduct due to drug abuse. On 30 June 1978, 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 Board also considered the letters of character reference that you submitted with your petition and your belief that your discharge would change after six months. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Furthermore, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. The Board also noted that you waived the right to have your case heard by an ADB, your best opportunity for retention or a more favorable characterization of service. 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 PFEFFER
Executive Director