



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

RDZ:ecb
Docket No. 02844-08
11 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.

Your record reflects that you enlisted in the Navy on 11 June 1984 at age 22. On 23 July 1985 the Naval Investigative Service (NIS) reported to your command that it had evidence that you had fraudulently enlisted by your failure to disclose a preservice civil conviction for theft in the first degree by civil authorities in Hilo, Hawaii. On 4 December 1985 you were tried and convicted by summary court-martial for two instances of dereliction of duty involving classified materials and larceny of money aboard ship. After your court-martial conviction an administrative discharge board (ADB) was convened to determine

whether or not you should be retained in the Navy or separated with an other than honorable (OTH) discharge. At the conclusion of these proceedings where you were represented by a military lawyer the ADB found that you had committed misconduct by fraudulently enlisting and then committing serious offenses, however rather than follow the recommendation of your commanding officer for an OTH discharge it recommended retention based on your remorse for your actions as well as your satisfactory work performance.

In accordance with applicable Navy regulations your commanding officer transmitted the results of the ADB proceedings to the Commander, Naval Military Personnel Command (NMPC) urging that the ADB's recommendation for retention be disapproved and that you be discharged, but because of the recommendation for retention, that you receive a general discharge under honorable conditions rather than an OTH discharge. A copy of your commanding officer's letter to NMPC dated 26 March 1986 is enclosed. NMPC forwarded this matter to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN) for final resolution. On 5 May 1986 ASN disapproved the ADB's recommendation for retention and directed that you be discharged due to fraudulent enlistment with a general discharge which you received on 4 June 1986.

Based on the evidence before it the Board concluded that ASN's action was neither arbitrary nor capricious but rather had both a sound factual and legal basis, namely, fraudulent concealment of a serious preservice civil conviction followed by repeated and serious military offenses. The Board believed that you were indeed fortunate to have received a general discharge since service members with disciplinary records similar to yours are routinely issued OTH discharges. Clearly your discharge was properly issued and under all facts and circumstances of your case the Board decided it should not be changed now as a matter of clemency.

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