



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

SMS
Docket No: 3780-08
8 January 2009

[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 7 January 2009. 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 16 February 1982, you reenlisted in the Navy at age 24 after a prior period of honorable service and served without incident for about 30 months. On 1 August 1984, you were counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an other than honorable (OTH) discharge. On 5 September 1984, you had nonjudicial punishment (NJP) for breach of the peace. On 5 July 1985, you were convicted by a special court-martial for four instances of use of marijuana.

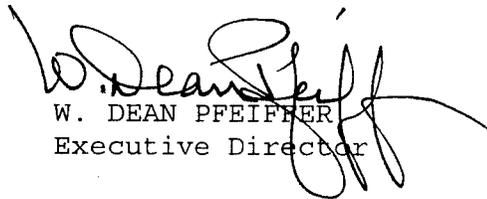
On 8 July 1985, your commanding officer initiated administrative separation by reason of misconduct due to drug abuse. In connection with this processing, you acknowledged that separation could result in an OTH discharge and elected to have your case heard by an administrative discharge board (ADB). On 22 July 1985, an ADB convened and found misconduct by reason of drug abuse and recommended an OTH discharge. On 16 September 1985, the Secretary of the Navy approved the recommendation and directed an OTH discharge by reason of misconduct due to drug abuse. On 2 October 1985, you declined substance abuse treatment at a Veterans' Administration hospital. On 2 October 1985, you were discharged with an OTH discharge by reason of misconduct due to drug abuse.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. The Board also considered your belief that your discharge would be upgraded after six months and good post service conduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct that continued even after you were warned that further infractions could result in an OTH discharge. Furthermore, there is no provision in the law or regulations that allows for recharacterization of service due to the passage of time or post service conduct. 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.

The Board noted that as a result of your prior honorable service, you may be eligible for veterans' benefits. You should contact the nearest office of the Department of Veterans Affairs if you desire clarification about your eligibility for those benefits.

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