



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

SMS
Docket No: 3848-08
16 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 14 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.

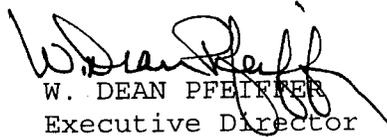
On 22 April 1969, you enlisted in the Navy at age 17 with parental consent. During the period 20 October 1969 to 7 May 1970, you had nonjudicial punishment (NJP) on three occasions. Your offenses included two instances of unauthorized absence (UA) totaling about five days and absence from your appointed place of duty. During the period 15 May 1970 to 29 August 1970, you were in a UA status on two occasions that totaled about 82 days. On 3 September 1970, you were convicted in civilian court of unlawful use of toluol and sentenced to one year of probation. On 2 October 1970, you were convicted by a special court-martial (SPCM) of the two periods of UA that totaled 82 days. During the period 9 November to 31 December 1970, you were in a UA status, a period of about 52 days.

On 22 January 1971, your commanding officer initiated administrative separation by reason of misconduct due to a civil conviction. In connection with this processing, you acknowledged that separation could result in an undesirable discharge (UD) and waived the right to have your case heard by an administrative discharge board (ADB). On 25 January 1971, you were convicted by a SPCM of the 52 day period of UA. The separation authority subsequently approved the discharge recommendation and directed a UD by reason of misconduct due to a civil conviction. On 1 March 1971, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. 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 PFEIFFER
Executive Director