



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

TJR
Docket No: 5247-08
19 March 2009



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 17 March 2009. The names and votes of the members of the panel will be furnished upon request. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 6 August 1987 at age 26 and began a period of active duty on 19 October 1987. You served for a year without disciplinary incident, but during the period from 5 October 1988 to 14 March 1990 when you received nonjudicial punishment (NJP) on four occasions and were issued a letter of censure. Your offenses were assault by biting, unlawful entry, threat with a knife, six periods of absence from your appointed place of duty, disobedience, disrespect, communicating a threat, and wrongful use of marijuana.

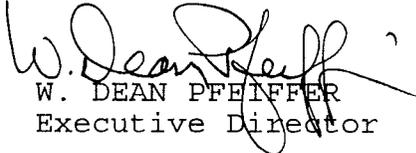
Subsequently, you were processed for an administrative separation by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 17 March 1990 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to frequent

involvement of a discreditable nature with military authorities as evidenced by four NJPs and a letter of censure. On 22 March 1990 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct, and on 28 March 1990, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and assertion that you were not afforded legal representation. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in four NJPs and included drug abuse. Further, you were given an opportunity to defend yourself and possibly obtain a better characterization of service, but waived your procedural right to present your case to an ADB. Finally, there is documented evidence in the record that is contrary to your assertion of not being afforded legal representation. Accordingly, your application has been denied.

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