



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

TJR  
Docket No: 5284-08  
8 April 2009

[REDACTED]

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 7 April 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 reenlisted in the Navy on 28 September 1988 and continued to serve without disciplinary incident until 18 December 1989, when you received nonjudicial punishment (NJP) for assault and battery. The punishment imposed was a \$580 forfeiture of pay, reduction to paygrade E-4, and restriction and extra duty for 15 days. A portion of the punishment was suspended for six months.

On 28 March 1990 you received your second NJP for disrespect and disobedience. About a month later, on 26 April 1990, you were convicted by summary court-martial (SCM) of assault and battery. You were sentenced to confinement on bread and water for three days, a \$482 forfeiture of pay, reduction to paygrade E-1, and confinement for 24 days.

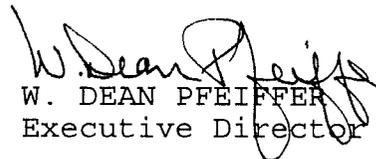
Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. At that time you waived your right to consult with legal counsel and to present your case to an administrative

discharge board (ADB). On 17 May 1990 your commanding officer recommended an other than honorable discharge by reason of misconduct due to a pattern of misconduct. On 21 May 1990 the discharge authority approved this recommendation, and on 29 May 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 youth and assertion that you were told that your discharge would be automatically upgraded. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which resulted in two NJPs and a court-martial conviction. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, no discharge is automatically upgraded due solely to the passage of time. 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