



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

SMS  
Docket No: 6046-08  
5 March 2009

[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 4 March 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 1 July 1985, you reenlisted in the Navy at age 28 after two prior periods of honorable service. During March 1986, you were convicted in civilian court of grand theft, ordered to pay restitution and placed on probation. On 19 March 1986, you were released to the Federal Marshall for failure to pay court ordered restitution and were subsequently returned to your command. On 23 April 1986, you were convicted in civilian court of violation of probation by failing to pay restitution. It appears that your charges were reduced to a misdemeanor and probation was terminated after you paid a portion of the restitution. On 13 May 1986, you were counseled regarding your misconduct and warned that further infractions could result in disciplinary action or an other than honorable (OTH) discharge. On 30 March 1987, you had nonjudicial punishment for use of marijuana. During the period 19 June to 9 October 1987, you were in an unauthorized absence (UA) status and you missed the movement of your ship. On 18 February 1988, you were convicted by a special court-martial of the 112 day period of UA.

On 3 May 1988, your commanding officer initiated administrative separation by reason of misconduct due to commission of a serious offense. 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 9 June 1988, an ADB convened and found that you were guilty of misconduct due to commission of a serious offense, and recommended an OTH discharge. On 15 July 1988, the Secretary of the Navy approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to commission of a serious offense. On 2 August 1988, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your prior periods of honorable service. The Board also considered your contention that you went UA because you were unjustly treated and belief that you deserve an upgrade because you have been a model citizen since 1988. 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. Regarding your contention, there is no evidence in the record to support it. Furthermore, there is no provision in the law or regulations that allows for recharacterization of service due solely to good post service conduct or the passage of time. The Board also noted that your case was heard by an ADB, which was 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