



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

TJR
Docket No: 6383-08
7 May 2009

[REDACTED]

[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 5 May 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 29 November 1984 after 12 years of prior honorable service. You continued to serve without disciplinary infraction until 5 December 1986, when you were apprehended by civil authorities and charged with the purchase of firearms from an undercover special agent. As a result, on 25 February 1987, you were convicted by civil authorities of two counts of illegal purchase of nonregistered Military Armament Corporation Model 10 (MAC-10) machine guns with silencers. You were sentenced to a \$50 assessment fee and three years probation.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). On 1 April 1987 an ADB recommended discharge under other than honorable conditions by reason of misconduct due to civil

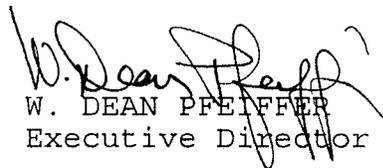
conviction. On 10 April 1987 your commanding officer, in concurrence with the ADB, also recommended an other than honorable discharge. On 28 April 1987 the discharge authority approved these recommendations and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct, and on 6 May 1987, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and desire to upgrade your discharge. It also considered your assertion that you made an erroneous decision due to a lack of sound judgment and in an effort to help your loved ones. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct in the civilian community. Accordingly, your application has been denied.

The Board believes that you are eligible for veterans' benefits which accrued during your prior periods of honorable service. However, your eligibility is a matter under the cognizance of the Department of Veterans Affairs (DVA). In this regard, you should contact the nearest DVA office concerning your rights, specifically, whether or not you are eligible for benefits based on these periods of service.

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