



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

BJG

Docket No: 7936-08

7 May 2009

[REDACTED]

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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 7 May 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 medical and naval records, 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. The Board found that you had a prior period of honorable service in the Marine Corps from 30 June 1982 to 20 December 1985. On 21 December 1985, you reenlisted in the Marine Corps. On 18 March 1988, you were notified of pending administrative separation processing for an other than honorable (OTH) discharge for commission of a serious offense (having sex with a 15 year old female). You waived all of your rights, including your right to an administrative discharge board (ADB). On 5 April 1988, your commanding officer's recommendation for an OTH discharge for commission of a serious offense (having sex

with a 15 year old female). You received an adverse fitness report, which noted your commission of a serious offense (two counts of sexual conduct with a minor (15 years of age)), a class 6 felony. On 13 April 1988, you received the OTH discharge for misconduct for commission of a serious offense, and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your prior period of honorable service and contention that your discharge would be automatically upgraded to honorable after three years. However, the Board concluded that these factors were not sufficient to warrant recharacterizing your OTH discharge because of your commission of very serious misconduct. You are advised that no discharge is automatically upgraded after the passage of time. The Board also noted that you waived your right to an ADB, your best opportunity for retention or a better characterization of service. In view of the above, 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