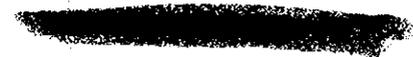




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No. 08880-08
25 January 2010



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 14 January 2010. 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.

You served on active duty in the Navy from 20 March 2001 to 13 April 2007, when you were discharged by reason of misconduct (drug abuse), with a discharge under other than honorable conditions. Available records indicate that you tested positive for cocaine use on several occasions, and that you were arrested and convicted by civil authorities of possession of a large quantity of cocaine. Following your discharge, the Department of Veterans Affairs (VA) determined that although you were not insane when you committed the misconduct that resulted in your

discharge under other than honorable conditions, your service was considered honorable notwithstanding your drug abuse..

The Board found that you were not entitled to be separated or retired from the Navy by reason of physical disability because misconduct separation processing takes precedence over and generally precludes disability evaluation processing. Accordingly, and as you have not demonstrated that you lacked mental responsibility for your actions and that it would be in the interest of justice for the Board to set-aside your administrative discharge, 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.

The Board did not consider your request for upgrade of your discharge because you did not exhaust an available administrative remedy by applying to the Naval Discharge Review Board. Enclosed in a DD Form 293 for your use in that regard.

Sincerely,


W. DEAN PFEIFFER
Executive Director