



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

SJN
Docket No: 09185-08
7 August 2009

[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 August 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy and began a period of active duty on 9 February 1981 at age 18. On 17 July and 3 September 1981, you received nonjudicial punishment (NJP) for possession and use of marijuana and four instances of disobedience. On 10 May 1982, you were convicted by special court-martial (SPCM) of failure to go to your appointed place of duty, two periods of unauthorized absence (UA) totaling 21 days, wrongful use of cocaine and marijuana, and disobedience. On 1 July 1982, you received a third NJP for altering a public record and signing a false official document (military identification card).

On 13 October 1982, you were convicted by a second SPCM of 16 specifications of failure to go to your appointed place of duty, two periods of UA totaling 31 days, and wrongful possession and use of a controlled substance. You were sentenced to a forfeiture of pay, confinement at hard labor, and a bad conduct discharge (BCD). You received the BCD after appellate review was completed.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, post service accomplishments, letter from the Miami Veterans Affairs office, your contention you were sexual assaulted, and this assault caused your misconduct. Nevertheless, the Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your record of three NJP's, one of which was for drug use, and convictions by SPCM for lengthy periods of UA and continued drug use. Concerning your contention, there is no evidence in the record to support it, and you submitted no such evidence. 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 PFENNER
Executive Director