



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

TJR
Docket No: 9424-08
21 May 2009

[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 21 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 10 November 1987 after 12 years of prior honorable service. You continued to serve without disciplinary incident until 19 July 1988, when you received nonjudicial punishment (NJP) for misbehavior as a sentinel. The punishment imposed was restriction for 60 days and reduction to paygrade E-5. The record reflects that you did not appeal this NJP. A month later, on 18 August 1988, you received your second NJP for dereliction of duty and were awarded a reduction to paygrade E-4, which was suspended for six months. Again, the record does not reflect that you appealed this NJP.

During the period from 28 February to 19 March 1989 your commanding officer generated correspondence regarding a performance review which detailed your substandard performance and leadership, denial of a security clearance, potential removal from the Radioman (RM) rating; imposition of two NJPs, review by a Quality Control Board, and nonrecommendations for advancement

and retention. Shortly thereafter, on 3 July 1989, you received a letter of substandard service which noted your deficiencies in performance and conduct, the requirement for improvement, and a warning that failure to improve could result in an administrative separation.

On 14 June 1990 you received a third NJP for two specifications of dereliction of duty and making a false official statement. The punishment imposed was reduction to paygrade E-4. The record also reflects that you did not appeal this NJP.

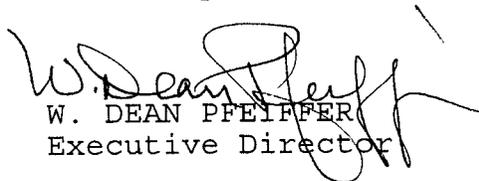
Your record contains three enlisted performance evaluations for the period from 29 January 1988 to 31 March 1990 in which you were not recommended for advancement or retention. Although the record reflects an indication that you "intended" to submit a statement of rebuttal to one of the performance evaluations, such a statement is not in the record. A separation performance evaluation for the period from 1 April to 6 October 1990 is not contained in your record. However, a page 9 entry reflects that you received a substandard overall trait of 2.8 for that period.

Subsequently, on 28 February 1991, while serving in paygrade E-4, you were honorably transferred to the Naval Reserve. At that time you were not recommended for retention or reenlistment and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, which includes the narrative with exhibits, carefully weighed all potentially mitigating factors, such as the prior honorable service in the Navy and Air Force, explanations surrounding your disciplinary infractions and the severity of the punishments, and request for advancement to paygrade E-6. It also considered your assertions that your paygrade reductions were caused by extreme prejudice, a paygrade reduction was severe as punishment for a first time NJP, and undergoing unusually close scrutiny by your chain-of-command. Nevertheless, the Board concluded that you have submitted no evidence to show that the NJPs were improperly or inappropriately imposed or that the punishment, specifically, a paygrade reduction, was too severe for the offenses committed. Further, the Board noted that, at the time of your masts, you did not take advantage of the appeal process at which time you could have expressed your concerns regarding severe or harsh punishment. In this regard, you did not appeal your NJPs or submit rebuttal statements to your substandard performance evaluations. Be advised that no NJP is removed from a record merely because of an individual's assertions of inappropriateness or the passage of time. Finally, there is no evidence in the record, and you submitted none, to support your assertions of an injustice, grievous error, or prejudice. Accordingly, your application has been denied.

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