



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

TJR
Docket No: 9530-08
19 August 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 18 August 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 enlisted in the Navy on 21 October 2002 at age 18 and served for five years and seven months without disciplinary incident. But on 29 May 2008 you received nonjudicial punishment (NJP) for dereliction of duty, making a false official statement, and communicating a threat. The punishment imposed was reduction in paygrade, restriction for 45 days, and a \$2,527.30 forfeiture of pay. The paygrade reduction was suspended for six months. However, this suspended punishment was vacated due to your continued misconduct, and on 23 July 2008, you received your second NJP for making a false official statement.

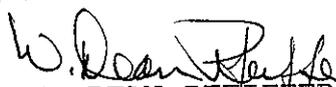
On 23 July 2008 you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After consulting with legal counsel, you waived your right to submit a statement in rebuttal to the discharge.

On 25 July 2008 your commanding officer recommended discharge by reason of misconduct due to commission of a serious offense and a pattern of misconduct as evidenced by two NJPs, repeated violations, unsuitability, actions clearly undermining good order and discipline, and an unwillingness to conform to rules and regulations. Subsequently, the discharge authority approved this recommendation and directed your commanding officer to issue you a general discharge by reason of misconduct. On 8 August 2008 you signed an administrative remarks entry in which you acknowledged that you were not recommended for reenlistment due to your misconduct. On 22 August 2008, while serving in paygrade E-3, you were so discharged and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application with attachments, carefully weighed all potentially mitigating factors, such as your youth, explanation regarding the circumstances surrounding your NJPs and discharge. It also considered your desire to change the characterization of your discharge, narrative reason for separation, and reenlistment code, and to be restored to paygrade E-4. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge, restoration in paygrade, or a change in your narrative reason for separation or reenlistment code because of the seriousness of your repetitive misconduct which resulted in two NJPs and multiple counselling sessions for your repetitive misconduct. Further, you were given an opportunity to defend yourself, but waived your procedural right to submit a statement of rebuttal to the discharge and your nonrecommendation for reenlistment. 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