



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

CRS
Docket No: 10089-08
18 November 2008

[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 November 2008. 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.

The Board found that you enlisted in the Navy on 31 January 1985 upon your discharge from the Navy Reserve. On 5 June 1985 you were convicted by civil authorities of driving while intoxicated. The sentence imposed by the court is not shown in the records available to the Board. On 22 August 1985 a special court-martial found you guilty of unauthorized absence, willful disobedience of a lawful order, disobedience of a lawful regulation, driving while intoxicated, and unlawfully entering a restricted area. The court sentenced you to confinement for sixty days, forfeiture of \$400.00 pay per month for two months, and reduction in rank. A message dated 4 September 1985 advised your commanding officer that the urine sample you submitted on 23 August 1985 had tested positive for cannabinoids (marijuana).

On 27 September 1985, your commanding officer recommended that you be separated from the Navy with a discharge under other than honorable conditions by reason of misconduct due to the commission of a serious offense. After being informed of the recommendation, you elected to waive the right to consultation with and representation by counsel and to present your case to an administrative discharge board. As you were recommended for discharge because of offenses of which you had been convicted by

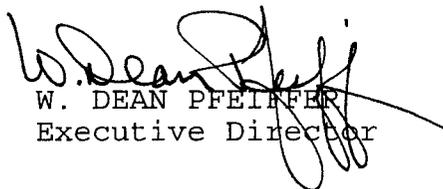
a special court-martial which did not impose a punitive discharge, the recommendation was forwarded to the Assistant Secretary of the Navy for Manpower and Reserve Affairs for review and action. The Secretary approved the recommendation on 28 October 1985. On 5 November 1985, the Commander, Naval Military Personnel Command directed that you be discharged under other than honorable conditions by reason of misconduct. You were so discharged on 12 November 1985.

In its review of your application, the Board carefully considered your contention to the effect that the judge who presided at your special court-martial judge told you that your misconduct did not warrant a punitive discharge, but found it insufficient to warrant corrective action in your case. The Board noted that your commanding officer, the Chief of Naval Personnel and the Assistant Secretary of the Navy for Manpower and Reserve Affairs knew that a punitive discharge had not been adjudged, but nevertheless determined that an administrative discharge under other than honorable conditions was warranted and appropriate.

The Board was not persuaded that it would be in the interest of justice for it to upgrade your discharge as a matter of clemency. 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 PFEIFFER
Executive Director