



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

TJR  
Docket No: 10351-08  
1 October 2009

[REDACTED]  
[REDACTED]  
[REDACTED]  
Dear [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 29 September 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 19 May 1987 and continued to serve for nearly three years without disciplinary incident. However, on 16 April 1990, you received nonjudicial punishment (NJP) for assault and spousal abuse and were awarded a reduction to paygrade E-4 that was suspended for six months. Shortly thereafter, on 7 May 1990, you were convicted by civil authorities of battery as evidenced by your repeatedly striking your spouse with your fist. You were sentenced to confinement for two days, court costs, and an unsupervised probation period. On 28 September 1990, the 16 April 1990 suspended paygrade reduction was vacated due to your continued misconduct. At that time you also received NJP for disrespect, drunk and disorderly conduct, and communicating a threat.

Your record contains a drug and alcohol report dated 12 October 1990 which details, in part, your alcohol related misconduct. It states that you had an alcohol related incident on base in the first class mess and while on restriction. It further states that you participated in three previous Level III rehabilitation programs, and were being administratively separated due to alcohol rehabilitation failure. On 16 October 1990 you received your third NJP for two specifications of breaking restriction and unlawful alcohol consumption while on restriction.

On 18 October 1990 you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 21 October 1990 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. On 30 October 1990 the discharge authority approved this recommendation and directed your commanding officer to issue an other than honorable discharge by reason of misconduct. On 9 November 1990 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior period of honorable service and desire to upgrade your discharge so that you may obtain veterans' benefits. It also considered your assertions of marital and health problems and that stress from these problems led to your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which resulted in three NJPs and conviction by civil authorities. Finally, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Accordingly, your application has been denied.

The Board believes that under current regulations you may be eligible for veterans' benefits which accrued during your prior periods of service. Whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA), and you should contact the nearest office of the DVA concerning your right to apply for benefits.

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