



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

TJR
Docket No: 2004-08
10 December 2008

[REDACTED]

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

You enlisted in the Navy on 15 October 1991 at age 18 and served without disciplinary incident until 27 October 1993, when you received nonjudicial punishment (NJP) for assault, disrespect, absence from your appointed place of duty, and failure to obey a lawful order. About four months later, on 1 and 11 February 1994, you received NJP for absence from your appointed place of duty, disrespect, and failure to obey a lawful order.

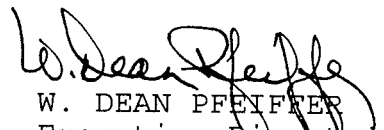
Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct as evidenced by the three NJPs. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 14 February 1994 your commanding officer recommended an other than honorable discharge by reason of misconduct due to a pattern of misconduct. On 18 February 1994 the discharge authority approved this recommendation, and on 22 February 1994, you were so discharged and assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, and assertion of racial profiling. 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. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, there is no evidence in the record, and you submitted none, to support your assertion. 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