



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

SJN
Docket No: 03100-08
12 February 2009



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 10 February 2009. 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 and began a period of active duty on 22 June 1988 at age 19. During the period from 22 October 1988 to 18 May 1990, you received three nonjudicial punishments (NJP's) for assault, sleeping on watch, resisting arrest, two instances of disobedience, absence from your appointed place of duty, and two instances of disrespectful language. You were counseled and warned that further misconduct could result in administrative discharge action.

On 13 August and 27 November 1990, you received NJP for drinking on duty, disrespect, driving under the influence, disobedience, and assault. On 28 February 1992, you were convicted by special court-martial (SPCM) of two specifications of conspiracy, adultery, indecent acts, and false swearing. You were sentenced to a reduction in paygrade, a forfeiture of pay, and confinement.

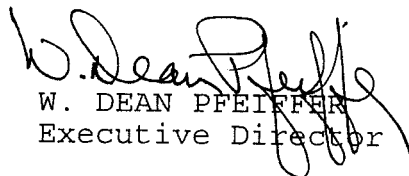
On 16 March 1992, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. You waived your right to consult with counsel, submit a statement or have your case heard by an administrative discharge board (ADB).

Your commanding officer forwarded his recommendation that you be discharged under other than honorable conditions by reason of misconduct. On 24 March 1992, the separation authority directed an other than honorable discharge by reason of misconduct. On 18 April 1992 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of five NJP's, two of which were imposed after you were counseled and warned concerning the consequences of further misconduct, and conviction by SPCM for very serious offenses. Further, you waived the right to an ADB, your best chance for retention or a better characterization of service. 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