



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

TAL
Docket No: 00825-09
20 November 2009

[REDACTED]
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[REDACTED]
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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 12 November 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.

Although your record is incomplete, it appears that you reenlisted in the Navy on 28 August 1996 after four years of honorable service. It further appears that you were administratively processed for separation under other than honorable (OTH) conditions in lieu of trial by court-martial. At that time, you would have consulted with qualified military counsel and acknowledged the consequences of receiving such a discharge. In this regard, your record clearly reflects a Certificate of Release or Discharge from Active Duty (DD 214) which shows that on 31 January 1997, you were in fact discharged with an OTH in lieu of court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge, and confinement at hard labor.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, prior honorable service, and overall last record of service, although incomplete. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge

given the seriousness of your misconduct. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. 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