



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

SJN
Docket No: 01454-09
23 December 2009

[REDACTED]

[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 15 December 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 29 March 1977 at age 17. During the period from 7 July 1977 to 24 March 1978, you received six nonjudicial punishments (NJP's) for four periods of unauthorized absence (UA), three instances of absence from your appointed place of duty, two instances of disobedience, and wrongful appropriation. Additionally, you were convicted by summary court-martial (SCM) of three specifications of absence from your appointed place of duty, four periods of UA, and unlawful entry. You were sentenced to confinement at hard labor and a forfeiture of pay.

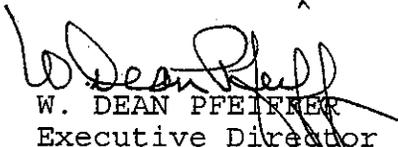
On 28 March 1978, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities. You waived your rights to consult counsel, submit a statement or have your case heard by an administrative discharge board (ADB). On 18 April 1978, your commanding officer forwarded his recommendation that you be discharged under honorable conditions by reason of misconduct.

On 20 April 1978, you received a seventh NJP for absence from your appointed place of duty and disobedience. On 1 May 1978, the discharge authority directed a general discharge by reason of misconduct. On 4 May 1978 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and contention that you accepted a general discharge with the understanding that it would be upgrade after a year. Nevertheless, the Board found that these factors and contention were not sufficient to warrant any change in your discharge given your record of seven NJP's, one of which occurred after you were notified of your pending separation, and conviction by SCM. The Board also noted that you were fortunate to receive a general discharge since a discharge under other than honorable conditions is often directed when an individual is discharged for misconduct. Concerning your contention, there is no evidence in the record to support it, and you submitted no such evidence. Finally, you are advised that there is no provision in law or Navy regulations that allow for recharacterization automatically after a year or due solely to the passage of time. 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