



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

CRS
Docket No: 1960-09
14 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 2 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 30 May 2000. On 10 May 2004 you were frocked to AM2 (E-5). On 11 June 2004 you received nonjudicial punishment for an unauthorized absence and failure to obey a lawful order. The punishment consisted of restriction and extra duty for 45 days and reduction in pay grade, which was suspended. In addition, the frocking to AM2 was revoked. On 24 September 2004 you received nonjudicial punishment for failure to obey a lawful order. The punishment consisted of reduction in pay grade from AMSN (E-3) to AMSA (E-2), forfeiture of \$668 per month for two months, and restriction and extra duty for 45 days.

On 29 September 2004 your commanding officer recommended that you be separated from the Navy with a general discharge by reason of misconduct due to a pattern of misconduct. When informed of this recommendation, you waived the right to consult with counsel and to present your case to an administrative discharge board. On 1 October 2004 you were separated with a general discharge, and assigned a reentry code of RE-4.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your family problems and overall record, and the contention that you should have been allowed to have a court-martial. The Board concluded that those factors were insufficient to warrant recharacterization of your discharge or changing its basis.

Applicable regulations require the assignment of an RE-4 reentry code when a Sailor is discharged by reason of misconduct. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reentry code.

The Board found no merit in your request to restore your former frocked rate of AM2. It concluded that your commanding officer acted reasonably in your case, and that he was in the best position to resolve the factual issues and to impose appropriate punishment. There is no credible evidence that you did not commit the charged offenses.

In view of the foregoing, 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