



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

TJR
Docket No: 2207-09
11 January 2010

[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 6 January 2010. The names and votes of the members of the panel will be furnished upon request. 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 reenlisted in the Naval Reserve on 1 June 1990 after five years of prior honorable service. You continued to serve without disciplinary incident until 29 October 1992 at which time you were apprehended and confined by civil authorities on two felony charges of inflicting cruel and inhuman corporal punishment and injury resulting in a traumatic condition upon a child. However, on 30 November 1991 you were convicted by civil authorities of one count of inflicting cruel and inhuman corporal punishment and injury resulting in a traumatic condition upon a child. You were sentenced to confinement for one year with time credited for the period served in confinement since apprehension.

On 15 March 1993 you were notified of pending administrative separation action by reason of misconduct due to civil conviction. At that time you waived your right to consult with legal counsel and to present your case to an administrative

discharge board (ADB). On 17 March 1993 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to civil conviction. On 19 March 1993 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct. On 29 March 1993, while in the custody of civil authorities, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and desire to upgrade your discharge. It also considered your assertion that you were denied procedural rights and the opportunity to submit a statement regarding the civil charges for which you were found guilty. 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 conviction by civil authorities. Finally, there is documented evidence in the record that is contrary to your assertion of being denied your rights. In this regard, the record clearly reflects that you were given an opportunity to defend yourself but waived your procedural right to present your case to an ADB. Accordingly, your application has been denied.

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