



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

JRE
Docket No. 02241-09
21 October 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 1 October 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 1 November 1982. You underwent a pre-separation physical examination on 11 January 1985 and were noted to have elevated blood pressure and depression, but neither condition was considered disqualifying for further service by the physician who conducted the examination. You were discharged under other than honorable conditions on 24 January 1985, by reason of your frequent involvement of a discreditable nature with military authorities, to include several unauthorized absences, incapacitation for duty as a result of previous indulgence in intoxicating liquor, and wrongful use of marijuana. On 26 November 2008 the Department of Veterans Affairs (VA) determined you were not

entitled to VA benefits because your discharge was based on willful and persistent misconduct.

The Board was not persuaded that you were unfit to reasonably perform the duties of your rank by reason of physical disability at the time of your discharge. In addition, it noted that you would not have been entitled to disability separation or retirement even if you had been unfit for duty at that time, because a discharge by reason of misconduct takes precedence over and generally precludes disability evaluation processing. Accordingly, and as you have not demonstrated that it would be in the interest of justice for the Board to upgrade your discharge to general or honorable, 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