



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

TJR  
Docket No: 2306-09  
17 February 2010

[REDACTED]

[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 17 February 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 enlisted in the Navy on 27 August 2004 at age 19 and began a period of active duty on 28 September 2004. You served for nearly a year without disciplinary incident, however, on 2 August 2005 you began a period of unauthorized absence (UA). On 10 August 2005, while in a UA status, you were apprehended and confined by civil authorities on charges of felonious assault and conspiracy to commit a felony. On 21 November 2005 you were convicted by civil authorities of malicious wounding and conspiracy. You were sentenced to unsupervised probation for 12 months, restitution in the amount of \$1,300, and an unspecified court cost. On 22 November 2005 you were returned to military custody, thus terminating your period of UA. As a result, on 16 December 2005, you received nonjudicial punishment (NJP) for a 143 day period of UA. The punishment imposed was reduction to paygrade E-2, a \$1,384 forfeiture of pay, and restriction and extra duty for 30 days. A portion of the punishment was suspended for six months.

On 10 January 2006 you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense as evidenced by 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 13 January 2006 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense as evidenced by civil conviction. Subsequently, the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to civil conviction, and on 7 March 2006, you were so discharged and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to change your reenlistment code. It also considered your assertions that your performance was exemplary, you performed with little or no supervision, and that you were recommended for advancement. Nevertheless, the Board concluded these factors were not sufficient to warrant a change of your reenlistment code because of the seriousness of your misconduct in both the military and civilian communities. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, the assignment of an RE-4 reenlistment code is mandatory when a Sailor is discharged by reason of civil conviction. 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