



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

TAL
Docket No: 02619-09
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 3 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 2 January 1979 at age 19. On 31 May 1979, you received nonjudicial punishment (NJP) for wrongful possession of marijuana and possession of two knives with blades exceeding three inches in length. On 8 November 1979, you received NJP for assault and battery. On 23 January 1980, you received NJP for three instances of unauthorized absence (UA) from your appointed place of duty. On 8 February 1980, you were convicted in civilian court of disturbing the peace and petty larceny in Portsmouth, Virginia. On 8 June 1980, you received NJP for disobeying an order by smoking in an unauthorized space (pyrotechnics magazine). On 3 July 1980, you received NJP for assault and breach of the peace. Additionally, after your second NJP, you were counseled and warned that further misconduct could result in administrative discharge action. On 6 July 1980, administrative discharge action was initiated to separate you by reason of misconduct due to frequent involvement of a discreditable nature with civil and military authorities. You waived your rights to consult counsel, or have your case heard by an administrative discharge board (ADB). You did, however elect to submit a

written statement. On 22 July 1980, your commanding officer forwarded his recommendation that you be discharged under other than honorable (OTH) conditions. On 30 July 1980, the discharge authority directed an OTH discharge by reason of misconduct due to frequent involvement. On 8 August 1980 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct, and the fact that you were counseled and warned concerning the consequences of further misconduct. Finally, the Board found that you waived the right to an ADB, your best chance for retention or a better characterization of service. 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 PREFFER
Executive Director