



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

TAL
Docket No: 02642-09
29 December 2009

[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 9 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 24 July 2001 at age 18. On 3 December 2003, you were convicted in civilian court of repeated sexual assault of the same child. You were sentenced to five years probation, six months confinement and 250 hours of community service. On 24 March 2004, you were notified of pending administrative separation action by reason of misconduct. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). On 12 May 2004, an ADB unanimously found that you had committed misconduct and recommended discharge under other than honorable (OTH) conditions. Subsequently, your commanding officer concurred with the ADB and forwarded your case to the discharge authority for review. On 20 May 2004, the discharge authority directed an OTH discharge by reason of misconduct. On 9 June 2004 you were so discharged. At that time, you were assigned an RE-4 reenlistment code.

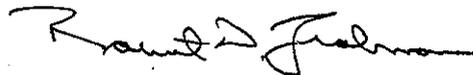
The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that

these factors were not sufficient to warrant changing your reenlistment code given your civil conviction for very serious offenses. Finally, an RE-4 reenlistment code must be assigned to all Sailors discharged due to misconduct. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board did not consider whether to upgrade your discharge or change the narrative reason for separation because you have not exhausted your administrative remedy of applying to the Naval Discharge Review Board (NDRB). You may apply to NDRB by submitting the attached DD Form 293.

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

Enclosure