



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

TJR  
Docket No: 3196-09  
11 March 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 9 March 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.

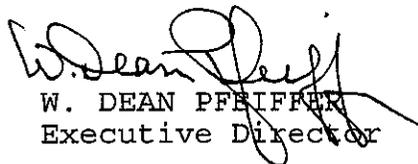
You enlisted in the Navy on 17 May 1990 at age 18 and began a period of active duty on 23 November 1990. You served without disciplinary infraction until 24 March 1991, at which time you and five other Sailors were apprehended by civil authorities on charges of sexual assault of a 16 year old female. The record reflects that the victim reported to civil authorities that she had been raped. Subsequently, on 30 May 1991, you were convicted by civil authorities of criminal sexual assault and/or sexual abuse. However, the charge was reduced to criminal sexual abuse. You were sentenced to court supervision for a year, 100 hours of public service, and court cost. You were also directed not to have any further contact with the defendant.

On 24 April 1991 you were notified of pending administrative separation action by reason of misconduct due to the civil conviction. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). On 23 May 1991 an ADB recommended discharge under other than honorable conditions by reason of misconduct due to civil conviction. On 30 May 1991 your commanding officer also recommended discharge under other than honorable conditions by reason of misconduct due to civil conviction. On 22 July 1991 the discharge authority approved these recommendations and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct. On 26 July 1991 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, desire to upgrade your discharge, and the passage of time. It also considered your assertion that were administratively separated even though the civil charges were scheduled for dismissal. 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 a civil conviction. Finally, no discharge is automatically upgraded due solely to the passage of time or an individual's good post service conduct. 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