



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

TAL  
Docket No: 3658-09  
5 February 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 27 January 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.

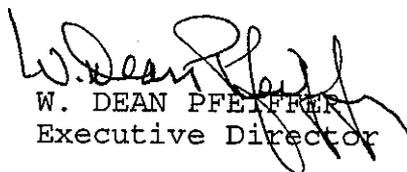
You enlisted in the Navy on 26 June 1985 at age 18 and served without disciplinary incident until 14 November 1985, when you received nonjudicial punishment (NJP) for wrongful use of marijuana and a 16 day period of unauthorized absence (UA). The punishment imposed was a \$600 forfeiture of pay and restriction and extra duty for 30 days. However, about four days later, on 18 November 1985, you broke restriction and began another period of UA that was not terminated until 13 January 1986. On 22 January 1986 you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for the foregoing period of UA totalling 56 days. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 30 January 1986 your request was granted and the commanding officer was directed to issue you an OTH discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the

potential penalties of a punitive discharge and confinement at hard labor. As a result of this action on 5 February 1986 you were discharged under other than honorable conditions.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth, post service conduct, the passage of time, and your desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your lengthy periods of UA which resulted in NJP and your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. 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 PFEFFER  
Executive Director