



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

JRE
Docket No. 06910-09
8 June 2010



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 June 2010. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You served on active duty in the Navy from 28 December 1999 to 12 August 2003 when you were discharged under other than honorable conditions by reason of misconduct based on a nonjudicial punishment for three violations of Article 86, Uniform Code of Military Justice (UCMJ), and a conviction by summary court-martial of absence without authority from 20 January 2003 until you were apprehended on 24 February 2003, and five specifications of failing to go to restricted muster at the times prescribed in violation of Article 92, UCMJ.

Although you were treated for colitis during your enlistment, the available records fail to demonstrate that you were unfit for duty by reason of physical disability on 12 August 2003. You would not

have been entitled to disability separation or retirement even if you had been unfit for duty on the date of your discharge, because your separation from the Navy by reason of misconduct would have taken precedence over disability evaluation processing. Accordingly, your request for correction of your record to show that you were discharged by reason of physical disability has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board did not consider your request for upgrade of your discharge to honorable or general because you have not exhausted an available administrative remedy by applying to the Naval Discharge Review Board (NDRB). Enclosed in a DD Form 293 which you should complete and submit to the NDRB to apply for upgrade of your discharge. Please note that the NDRB does not have the authority to change the basis of your discharge to physical disability.

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