



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

TJR
Docket No: 7698-09
11 June 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 June 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 were commissioned in the Navy in the rank of ensign (paygrade O1-E) on 28 April 2006. On 15 November 2006 you signed a System Authorization Access Request (SAAR) and as such acknowledged the established guidelines regarding prohibited usage of government computers. However, about seven months later, on 7 June 2007, you were counselled regarding the violation of the SAAR by accessing unauthorized and/or proxy websites. In this regard, your computer system account was suspended for 90 days. Nevertheless, it appears that on 23 July 2007, you were granted access to your computer account and again violated the SAAR by accessing an unauthorized website and downloading pornographic materials. At this time your computer system account was suspended indefinitely.

On 9 August 2007 you received nonjudicial punishment (NJP) for failure to obey a lawful order (as evidenced by violation of the SAAR by wrongfully accessing unauthorized websites and downloading pornographic material to a government network). The punishment imposed was a punitive letter of reprimand. On 20 August 2007 you submitted an appeal to the NJP and the punishment imposed stating, in part, that you were not in violation of the requirements of the SAAR. However, on 7 September 2007, your commanding officer provided a written endorsement rebutting your appeal and recommending that the NJP be upheld based on your misconduct, specifically, violation of the SAAR. Shortly thereafter, on 26 September 2007, your appeal was denied and the NJP upheld because you were found guilty of violation of the SAAR, had been previously counselled, had your computer account privileges suspended for improperly accessing unauthorized websites, and were clearly on notice of the charge for improperly using a government computer.

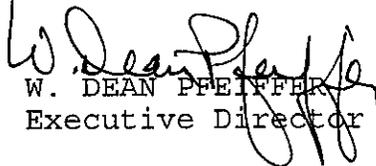
Subsequently, you were processed for an administrative separation by reason of misconduct. On 19 August 2008 the Navy Personnel Command forwarded a recommendation for separation to the Secretary of the Navy (Manpower and Reserve Affairs) for approval. It appears that you were recommended for separation under honorable conditions. SECNAV approved this recommendation and on 30 September 2008 you were issued a general discharge by reason of misconduct.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to remove the NJP and material pertaining to it, presumably upgrade your discharge, and stop recoupment of your educational expenses. It also considered your assertion regarding you nonviolation of the SAAR and failure to obey a lawful general order or regulation. Nevertheless, the Board concluded these factors were not sufficient to warrant relief because of the seriousness of your misconduct as an officer of the Navy. Further, there is sufficient documented evidence in the record that is contrary to your assertion. Finally, the Board noted that Sailors separated by reason of misconduct normally receive discharges under other than honorable conditions, and as such, you were fortunate to receive a general discharge. 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