



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

SJN
Docket No: 10387-09
3 August 2010

[REDACTED]

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 27 July 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 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 18 December 2003. Based on the information currently contained in your record it appears you served without incident for over four years until 1 April 2008, when you refused nonjudicial punishment (NJP) for wrongful use of cocaine. Subsequently, administrative discharge action was initiated to separate you by reason of misconduct due to drug abuse. You elected to consult counsel and have your case heard before an administrative discharge board (ADB). On 18 August 2008, the ADB unanimously found that you had committed misconduct by wrongfully using cocaine and recommended separation with an other than honorable discharge by reason of misconduct due to drug abuse. On 29 August 2008 your commanding officer (CO) concurred with the ADB's findings, but forwarded your case recommending that you receive a general discharge. However, on 9 September 2008, the separation authority directed an other than honorable discharge by reason of misconduct due to drug abuse. On 26 September 2008 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your overall record, character letters, and contention that your discharge should be set aside because you felt that your ADB was illegally comprised and tainted with unlawful command influence because the senior member of the ADB was your acting CO. Nevertheless, the Board concluded these factors were not sufficient to remove the ADB or set aside your discharge from your official records, for the reasons set forth in your CO's forwarding letter dated 29 August 2008 to the separation authority in response to your counsel's letter of deficiency. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

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