



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

TJR
Docket No: 11205-09
30 August 2010



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 24 August 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 Naval Reserve on 26 January 1986 at age 18 and began a period of active duty on 22 August 1986. You served for nearly two years without disciplinary incident, but during the period from 2 June to 4 November 1988, you received nonjudicial punishment (NJP) on five occasions for two periods of unauthorized absence totalling five days, disobedience, absence from your appointed place of duty, and seven periods of failure to go to your appointed place of duty. You were also counselled on 11 occasions and warned that further misconduct could result in administrative discharge action.

On 7 November 1989 you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. Although you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB), you submitted a statement of rebuttal to the separation. On 7 December 1989 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct as evidenced

by your repetitive misconduct and counselling on 11 occasions. On 27 January 1989 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to a pattern of misconduct. However, on 2 February 1989, you received your sixth NJP for disobedience and were awarded confinement on bread and water for three days. Subsequently, on 8 February 1989, you were issued an other than honorable discharged by reason of misconduct due to a pattern of misconduct.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. It also considered your assertion that you were the victim of prejudice and told that the characterization of your discharge would change five years after your separation. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in six NJPs. Further, you were given an opportunity to defend yourself but waived your procedural right to present your case to an ADB. Furthermore, there is no evidence in the record, and you submitted none, to support your assertion of undue prejudice. Finally, no discharge is upgraded and/or changed due solely to the passage of time. In view of the above, 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