



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

TJR
Docket No: 12857-09
22 September 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 14 September 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 Marine Corps on 24 August 1992 at age 22 and served for about a year and four months without disciplinary infraction. However, on 10 February 1994, you were counselled regarding deficiencies in your performance and conduct, specifically, exercising poor judgment by not reporting off leave on time and being in an unauthorized absence (UA) status. On 9 March 1994 you received nonjudicial punishment (NJP) for a 26 day period of UA and were awarded restriction and extra duty for 14 days and a \$194 forfeiture of pay. On 18 March 1994 you were again counselled regarding deficiencies in your performance and conduct due to being absent from your appointed place of duty.

On 9 June 1994 you were convicted by summary court-martial (SCM) of two periods of failure to go to your appointed place of duty and breaking restriction. You were sentenced to a \$594 forfeiture of pay, restriction for 60 days, and reduction to paygrade E-1. During the period from 4 October to 1 November

1994, you were again counselled on three more occasions for being absent from your appointed place of duty, dropped from the rifle range, making unsatisfactory progress regarding your weight control, leaving your room unlocked, and having a female enter your room after hours. On 9 November 1994, you received your second NJP for failure to go to your appointed place of duty and were awarded restriction and extra duty for 30 days and a \$388 forfeiture of pay, which was suspended for six months. Shortly thereafter, on 29 November 1994, you were counselled due to your lack of respect toward your superiors and failure to follow orders in a timely manner.

On 5 January 1995 you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. After consulting with legal counsel you waived your right to present your case to an administrative discharge board (ADB). On 23 January 1995 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct as evidenced by your record of misconduct. On 13 February 1995 the discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct and on 22 February 1995 you were so discharged.

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 counsel's documentation provided in support of your request for a medical discharge due to a diagnosed chronic lower back syndrome, and the request for a personal hearing. 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 two NJPs, SCM, and numerous counselling and warnings of an administrative discharge. The Board concluded that you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Further, applicable regulations state, in part, that even if a Sailor is processed for separation by reason of a medical or mental condition, if the Sailor meets the requirements of another reason, such as misconduct, the Sailor will be separated for the latter reason. Finally, Board regulations state that personal appearances/hearings are not granted as a right, but only when the Board determines that such an appearance will serve some useful purpose. In this regard, the Board determined that a personal appearance/hearing was not necessary and considered your case based on the evidence of record. 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