



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

TAL
Docket No: 847-10
29 October 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 October 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 15 August 2001 at age 19. On 12 June 2008, you were a selectee for advancement to quartermaster first class (QM1) from participation in the March 2008 Navy-wide examination. At that time you were frocked and authorized to wear the uniform and insignia of a QM1 without pay entitlement or allowances of the pay grade. On 7 October 2008, you received nonjudicial punishment (NJP) for failure to obey a lawful written order, by not advising your command of civil charges for driving under the influence of alcohol (DUI). The punishment awarded was forfeiture of pay, which was suspended for six month, extra duty for 45 days and removal of the frocked rank.

The Board, in its review of your application, carefully weighed all potentially mitigating factors such as your overall record of more than nine years of active service. Nevertheless, the Board concluded these factors were not sufficient to warrant removing the NJP. The U.S. v. Serianne, NMCCA 200900330, decision does not state that it is to be applied retroactively. In Teague v. Lane, 489 U.S. 288, court found that new constitutional rules are

not applied retroactively on collateral review. Your NJP was final over two years ago, prior to the U.S. v. Serianne decision and your petition to the Board is a request for retroactive application of the findings. Additionally, the Board noted that you did not appeal the NJP and concluded that its removal from your record is unwarranted. 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