



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

TJR
Docket No: 4509-09
12 April 2010

[REDACTED]

[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 6 April 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 13 June 1979 at age 17 and began a period of active duty on 10 March 1981. You served without disciplinary incident until 26 January 1982, when you received nonjudicial punishment (NJP) for absence from your appointed place of duty. About three months later, on 27 April 1982, you were convicted by special court-martial (SPCM) of assault, disrespect, disobedience, and resisting arrest. About a year later, on 18 April 1983, you received NJP for disrespect and disobedience.

On 8 March 1984 you received your third NJP for wrongful use of marijuana and disorderly and uncooperative conduct. Shortly thereafter, you were notified of administrative separation by reason of misconduct due to a pattern of misconduct, and waived your procedural right to consult with legal counsel and to present your case to an administrative discharge board (ADB). As a result of this action, on 11 May 1984, you were issued an other than honorable discharge 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 not involved in any alcohol or drug related activity or a pattern of misconduct. It further considered your assertion that you were injured when military police used excessive force during an arrest procedure. 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 three NJPs and a court-martial conviction. Further, you were given an opportunity to defend your actions, but waived your procedural right to present your case to an ADB. Finally, there is documented evidence in the record that is contrary to your assertions. 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 PFENIFFER
Executive Director