



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

SJN  
Docket No: 04845-10  
3 March 2011

[REDACTED]

This is in reference to your application for correction of your late brother, [REDACTED] 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 1 March 2011. 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 late brother's 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.

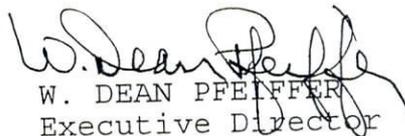
Your late brother enlisted in the Navy and began a period of active duty on 19 December 1984. The Board found that he was counseled regarding periods of unauthorized absences (UA) and wrongful use of a controlled substance, and warned that further misconduct could result in administrative discharge action. During the period from 23 August 1986 to 6 March 1987, he received three nonjudicial punishments (NJP's) for larceny, making a false official statement, and four periods of unauthorized absence totaling three days. Again, he was counseled and warned about the consequences of further misconduct. On 9 April 1987, he was convicted by summary court-martial (SCM) of wrongful use of marijuana. He was sentenced to confinement at hard labor and a forfeiture of pay. On 15 October 1987, he received his fourth NJP for absence from his appointed place of duty, three instances of disobedience, and incapacitation for the proper performance of his duties. Subsequently, administrative discharge action was initiated by reason of misconduct due to a pattern of misconduct. He waived his rights to consult counsel, submit a statement or have his case heard by an administrative discharge board (ADB). His case

was forwarded recommending that he be discharged under other than honorable (OTH) conditions by reason of misconduct. His commanding officer stated, in part, that he clearly demonstrated his inability to conform to military discipline, needed to avoid drugs, and had no potential for further service. On 29 October 1987, he received his fifth NJP for three instances of absence from his appointed place of duty and disobedience. On 29 November 1987, the discharge authority concurred with the recommendation for separation and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. He was so discharged on 10 December 1987.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as his youth, record of service, and belief that his characterization of service would be upgraded after a period of years. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of his discharge given his five NJP's, conviction by SCM of drug use, and the fact that he was counseled and warned on several occasions of the consequences of further misconduct. Finally, you are advised that there is no provision of law or in Navy regulations that allows for recharacterization automatically after a number of years or due solely to the passage of time. 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