



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

TJR
Docket No: 7374-10
6 May 2011

[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 3 May 2011. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 11 May 2007 you received nonjudicial punishment (NJP) for two specifications of conduct unbecoming an officer and a gentleman. In this regard, you were charged with wrongfully and dishonorably having a sexual relationship, on diverse occasions, with the wife of an enlisted servicemember during two timeframes, specifically, "on or about November 2004 until May 2005," and again on or about September until October 2006." The punishment imposed was a written letter of reprimand and restriction for 30 days, which was suspended. The record reflects that on 17 May 2007 you were subsequently found guilty of only one specification of conduct unbecoming an officer and a gentleman for the period cited "between on or about November 2004 and on or about May 2005." The record further reflects that you did not appeal the NJP, and as such, presumably accepted the findings of guilt to the cited offense.

Subsequently, on 23 May 2007, your commanding officer submitted the report of NJP to the discharge authority and further requested you be detached for cause. On 6 June 2007 you submitted a rebuttal to the detachment for cause and NJP in which you stated, in part, that you pled guilty to one specification of conduct unbecoming an officer and a gentleman from a single incident that happened two years prior to the imposition of the NJP. Nonetheless, in September 2007, you were processed for an administrative separation by reason of misconduct due to commission of a serious offense.

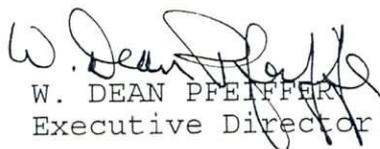
In February 2008, a board of inquiry (BOI) recommended discharge under honorable conditions by reason of misconduct due to commission of a serious offense. In August 2008 the foregoing recommendation was approved at all levels of review. Subsequently, your status as an officer in the rank of lieutenant junior grade (LT(jg)) was reverted to an enlisted status paygrade of E-9, and on 30 September 2008, you were discharged under honorable conditions by reason of misconduct.

The Board concluded that your commanding officer's decision to impose the foregoing NJP, and the punishment imposed, was appropriate, and that it was administratively and procedurally correct. The Board further concluded that because there is no error or injustice in your case and you have not provided evidence to support removal of derogatory material from your record, any and all adverse documentation regarding your misconduct, to include the BOI proceedings, administrative remark entries, fitness reports, and your administrative discharge should remain a part of your naval record.

The Board considered the allegation that the offense for which you pled guilty to and were found guilty of at NJP on 11 May 2005 occurred outside the statute of limitations under Article 43 of the Uniform Code of Military Justice (UCMJ). However, the Board concluded that the record of NJP clearly reflects that "on or about May 2005" you wrongfully and dishonorably had a sexual relationship with the wife of an enlisted servicemember, and as such, does not reflect that the offense occurred outside the statute of limitations. The Board noted the two timeframes (i.e., March-April 2005 and September-October 2006) cited in the NJP memorandum and concluded that they were secondary administrative errors and did not negate the fact that your misconduct/offense occurred within the two years of the imposition of the NJP, which you pled guilty to. 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