



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

TJR
Docket No: 4245-11
28 April 2011

[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 26 April 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.

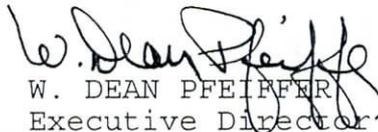
The Board found that on 14 August 2010 you were the subject of a traffic violation as a result of your driving under the influence of alcohol. It appears that after you declined to take a breathalyzer test, you were arrested and issued a citation. Presumably, you were advised of a date to appear in civil court if you wished to contest the citation. Nonetheless, on 27 September 2010, you received nonjudicial punishment (NJP) for failure to obey a lawful order as evidenced by your driving under the influence of alcohol and drunken or reckless operation of a vehicle. The punishment imposed was reduction to paygrade E-4 and a \$2,198 forfeiture of pay, a portion of which was suspended for six months. The record clearly reflects that you did not appeal the NJP, and as such, presumably accepted the findings of guilt.

About six months after your arrest by civil authorities, on 11 February 2011, you appeared for a hearing in civil court. The foregoing civil case, specifically, the **administrative action to suspend or revoke your driving privileges** for driving under the influence of alcohol and refusing to take a breathalyzer test, was dismissed because the officer who issued the citation did not appear in court.

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. Further, the Board concluded that only the administrative action to suspend your driving privileges was dismissed, and that this dismissal was based solely on a technicality and does not negate the fact that you were guilty of the offense of driving under the influence of alcohol. As such, the Board concluded that there was no evidence in the record to support removal of the NJP. Finally, the Board noted that you did not appeal the NJP and concluded that its removal from your record is unwarranted, and that such action would be unfair to your peers, against whom you will compete for promotions and assignments. 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