



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TAL
Docket No: 4786-11
22 February 2012



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 8 February 2012. 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 reenlisted in the Marine Corps in 1982 after more than four years of prior honorable service. On 8 February 1987, you were charged with two counts of vehicular manslaughter while driving under the influence of alcohol in San Diego, California. On 13 September 1987 you were notified of pending administrative discharge processing with an other than honorable (OTH) discharge due to misconduct. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). On 18 August 1989, the ADB found that you committed misconduct and recommended that you be separated with an OTH discharge. On 4 November 1989 the separation authority agreed with the recommendation of the ADB and directed your commanding officer to issue you an OTH discharge by reason of misconduct, and on 5 December 1989, you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and prior honorable service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in a civil conviction. Members of the armed services who are convicted by civil authorities may be discharged for misconduct. Finally, there is no provision of law or in Navy regulations that allows for recharacterization of service 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