



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

TAL  
Docket No: 110-12  
26 September 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 19 September 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 enlisted in the Navy and began a period of active duty on 4 December 1989 at age 19. You received nonjudicial punishment (NJP) on 5 June and 9 August 1990 for two instances of unauthorized absence (UA) from your unit for a period totaling two days, and failure to obey a lawful order. You were counseled regarding your misconduct and warned that further offenses could result in administrative separation. On 24 January 1991, you were convicted by summary court-martial (SCM) of failure to go to your appointed place of duty, insubordinate conduct toward a superior noncommissioned officer, two instances of malingering by exaggerating an alleged neck and cervical injuries and pain to your hip, and wrongfully communicating a threat to a nurse. The sentence imposed was confinement, a forfeiture of pay, restriction for 30 days and

a reduction in paygrade. On 21 February 1991, you received NJP for failure to go to your appointed place of duty and two instances of failure to obey a lawful order. You were notified of pending administrative discharge processing with an other than honorable (OTH) discharge due to misconduct (commission of a serious offense). You waived all of your procedural rights, including your right to an administrative discharge board (ADB). On 23 April 1991, you received the OTH discharge for misconduct (commission of serious offense).

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service and contention that you were the victim of racism. 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 three NJPs and a SCM. The Board noted that you waived your right to an ADB, your best opportunity for retention or a better characterization of service. The Board also noted that there is no evidence in your record, and you submitted none, to support your contention of racial prejudice. Finally, there is no law or Navy regulation which provides that an unfavorable discharge may be upgraded, based solely on the passage of time or good conduct in civilian life subsequent to leaving naval service. 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