



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

BJG
Docket No: 10195-10
23 June 2011

[REDACTED]

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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 21 June 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 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.

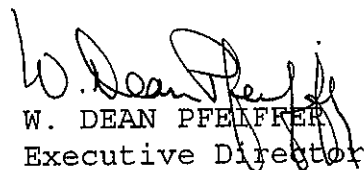
You enlisted in the Marine Corps and entered active duty on 4 September 2001. On 5 May 2009, you were indicted by a civilian grand jury for taking indecent liberties with a child (two counts), first degree sex offense with a child (two counts), and first degree rape of a child (two counts). You were then notified that your commanding officer was recommending you for administrative separation due to misconduct (commission of a serious offense (COSO)). You requested your procedural right to an administrative discharge board (ADB). Your ADB found that

you had committed misconduct (COSO) and recommended an other than honorable (OTH) characterization of service. Your commanding officer agreed with the ADB's finding and recommendation, and on 4 March 2010, you were discharged with an OTH characterization of service due to misconduct (COSO), and assigned an RE-4 (not recommended for retention) reentry code. On 9 June 2010, you were tried in civil court for taking indecent liberties with a child, first degree sex offense with a child, and rape of a child. The victim of these offenses refused to testify against you, so the charges were dismissed.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your prior honorable service and civil court dismissal. However, the Board concluded that your discharge should not be changed, your promotion to pay grade E-6 should not be reinstated, nor should you be reinstated on active duty due to your COSO. The Board found the charges against you were dismissed only because the victim would not testify against you. A dismissal is not equivalent to a finding of not guilty. You are advised that no discharge is upgraded due merely to the passage of time or post service good conduct. In view of the above, 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