



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

TRG
Docket No: 6867-06
29 January 2008

Dear [REDACTED]

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 29 January 2008. 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 for five years on 28 July 1997 at age 18. On 4 August 2000 you received nonjudicial punishment for disrespect, two instances of communicating a threat, possession of an unauthorized weapon and underage drinking. A general court-martial convened on 23 August 2001 and convicted you of sodomy, indecent exposure, committing indecent acts, and impersonating a noncommissioned officer while performing in a pornographic film. The court sentenced you to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement at hard labor for three years and a dishonorable discharge. The confinement in excess of eight months was suspended in accordance with a pretrial agreement. On 6 November 2002, the Naval Clemency Board mitigated the dishonorable discharge to a bad conduct discharge. On 10 May 2005, the U.S. Navy-Marine Corps Court of Criminal Appeals set aside your conviction of impersonating a noncommissioned officer but affirmed the findings and sentence. Upon completion of appellate review, the bad conduct discharge was issued on 24 February 2006.

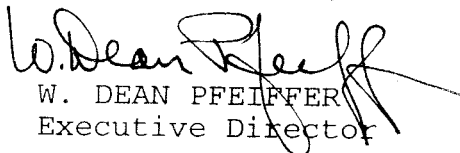
In its review of your application the Board carefully weighed all potentially mitigating factors, such as your period of good service and your contentions, in effect, that you were improperly convicted in violation of Supreme Court precedence concerning sex

between consenting adults. You also contend that your sentence was too severe given the punishment awarded to women in the Armed Forces who had posed nude in magazines. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your conviction by court-martial of serious offenses. The Board is prevented by law from reviewing courts-martial and must limit its review to determining if the court-martial sentence should be reduced as a matter of clemency. The Board concluded that the punishment which included a bad conduct discharge was not too severe and a modification of the court-martial sentence was not warranted.

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