



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

TRG
Docket No: 11135-07
26 February 2008

[REDACTED]

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 18 February 2009. 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.

Your record shows that you were advanced to petty officer first class (TM1; paygrade E-6) on 21 August 1998 and then served in an excellent manner for over four years. In your performance evaluation for the period ending 30 August 2002 you were recommended for early promotion and retention in the Navy Reserve.

On 31 August 2002 you reported for extended active duty. Sometime after that you received nonjudicial punishment (NJP) for violations of Article 92 and 134 of the Uniform Code of Military Justice. The punishment imposed was a reduction in rate to petty officer second class (TM2; paygrade E-5). The NJP documentation is not filed in your record and the details of the offenses are unknown. The subsequent performance evaluation for the period ending 26 February 2003 indicates that you were reduced in rate during the evaluation period. You were released from active duty on 24 April 2003.

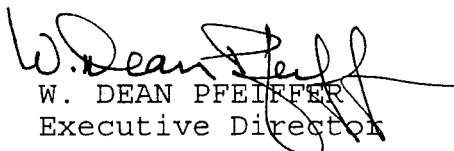
You continued to be a member of the Navy Reserve and earned qualifying years in support of the Sea Cadet program. You ultimately qualified for reserve retirement in 2007 and were retired as a TM2.

As indicated, the NJP documentation is not filed in the record and details of the offenses are unknown. The Board considered your contention that other individuals involved in the incident lied about your involvement. It is clear that you would have presented your version of events to the commanding officer prior to the imposition of punishment. Since no other information is available, the Board believed that the commanding officer properly considered the evidence and believed that you committed the offenses. Further, there is no evidence that he abused his discretion when he elected to impose a reduction in rate at the NJP. Therefore, the Board concluded that you were properly reduced in rate and a correction to your record is 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