



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

SMS
Docket No: 1582-08
6 October 2008

[REDACTED]

[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 1 October 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.

On 23 May 1988, you enlisted in the Navy at age 18. During the period 10 October 1989 to 26 February 1990, you were in an unauthorized absence (UA) status on two occasions totaling about 136 days. On 28 March 1990, you were convicted by a special court-martial (SPCM) these offenses. On 3 July 1990, you began another UA that ended on 7 August 1990, a period of about 35 days. On 17 August 1990, you had nonjudicial punishment for the 35 day period of UA. You were also counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an other than honorable (OTH) discharge. On 11 July 1991, you tested positive for Human Immunodeficiency Virus (HIV). On 15 July 1991, a medical board found that you were in stage I of HIV, found you fit for full duty in a non-deployable status, and recommended reevaluation in six months.

During the period 26 September 1991 to 4 December 1991, you were in a UA status on two occasions totaling about 67 days. During the period 18 February to 6 March 1992, you were hospitalized for reevaluation.

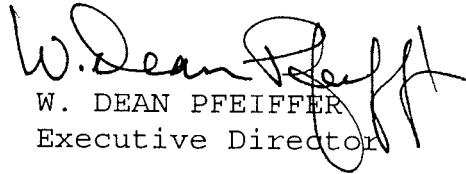
On 17 April 1992, your commanding officer initiated administrative separation by reason of misconduct due to commission of a serious offense. In connection with this processing, you acknowledged that separation could result in an OTH discharge and elected to have your case heard by an administrative discharge board (ADB). On 20 April 1992, you were convicted by a SPCM of the two periods of UA that totaled 67 days and 13 instances of writing worthless checks with intent to defraud. On 27 April 1992, an ADB convened and found that you were guilty of misconduct due to commission of a serious offense and recommended an OTH discharge. On 3 June 1992, the separation authority approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to commission of a serious offense. On 24 July 1992, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth and desire for a better discharge. The Board also considered your contention that your diagnosis of being HIV positive contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct that continued even after you were warned that further infractions could result in an OTH discharge. Regarding your contention, there is no evidence in the record to support your contention, since your misconduct began more than 21 months before you were diagnosed as being HIV positive. Therefore, the Board concluded that the discharge was proper as issued and no change is 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