



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

SMS
Docket No: 3034-08
11 December 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 10 December 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 3 February 1971, you enlisted in the Marine Corps at age 18. During the period 22 March to 22 December 1971, you had nonjudicial punishment (NJP) on three occasions. Your offenses included failure to obey a lawful order, assault, and a day of unauthorized absence. On 18 January 1972, you were granted a drug exemption. On 4 February 1972, a medical evaluation stated that you abused drugs and diagnosed you with multiple character disorder traits. On 6 February 1972, you were apprehended by civilian authorities and charged with burglary and rape. On 10 March 1972, you were convicted in civil court of rape and sentenced to an indeterminate period in a state hospital.

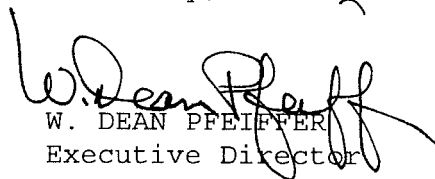
On 26 May 1972, your commanding officer initiated administrative separation by reason of misconduct due to civil conviction. In connection with this processing, you acknowledged that separation could result in an other than honorable (OTH) discharge and elected counsel and the right to have your case heard by an administrative discharge board (ADB). On 18 October 1972, an ADB convened with your counsel present, found misconduct due to a civil conviction, and recommended an OTH discharge. On 31 October 1972, the separation

authority approved the discharge recommendation and directed an OTH discharge by reason of misconduct due to civil conviction. On 7 November 1972, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. The Board also considered your contention that your discharge resulted from one isolated incident and you had no other disciplinary actions. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Regarding your contention, the record shows that you had three NJP's before you were convicted in civil court of rape and your discharge met the requirements established by regulations. 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