



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

CRS  
Docket No: 3653-08  
21 August 2009

[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 19 August 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.

The Board found that you enlisted in the Navy on 24 July 1989. On 8 December 2005 you received nonjudicial punishment (NJP) for fraternization. The punishment imposed consisted of forfeiture of \$1666.00 per month for two months and restriction and extra duty for 45 days. A fitness report for the period of 4 October to 8 December 2005 contains a reference to the NJP, and is adverse. On 5 April 2006 an administrative discharge board (ADB) convened to determine whether or not you had committed misconduct, and if so, to recommend retention or discharge. The ADB found that you had not committed misconduct, and recommended that you be retained in the Navy. Your commanding officer did not contest the findings or recommendation of the ADB; however, he denied your request that he set-aside the related NJP. You received an adverse fitness report for the period 9 December 2005 to 15 September 2006. The report indicates that you had failed the spring 2006 physical fitness assessment.

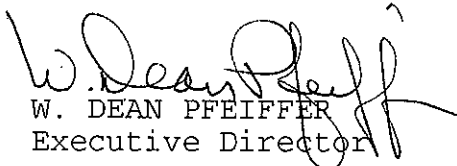
The Board did not accept your contention to the effect that no misconduct or violations ever occurred. The Board presumed that your commanding officer acted reasonably in your case when he determined that you had committed that offense, and concluded that he was in the best position to resolve the factual issues

and to impose appropriate punishment. The finding by the ADB that you did not commit misconduct, which is not binding on the Board, was considered insufficient to warrant the expunction of the NJP and related documents from your record.

Concerning your request for removal of the two above fitness reports, the Board found that you did not make any contentions of error or injustice in connection with either report and no material errors are apparent in either. As you have not demonstrated that the reports are erroneous or unjust, there is no basis for removing them from your record. 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