



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

JRE
Docket No. 04660-08
26 January 2009



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 15 January 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.

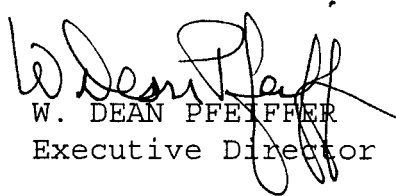
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 23 February 1999. On 30 April 2004, you were arraigned by a special court-martial and pleaded guilty to violating a lawful general order and stealing military property of a value of more than \$500.00. You were sentenced to a bad conduct discharge, confinement for a period of six months, and reduction to private, pay grade E-1. On 7 December 2006, upon the completion of appellate review of your conviction and sentence, you were separated from the Marine Corps with a bad conduct discharge.

The available records do not establish that you were unfit for duty by reason of physical disability at the time of your discharge. You would not have been entitled to be separated or retired by reason of physical disability even if you had been unfit for duty, because disability evaluation processing would have been precluded by your special court-martial and punitive separation. Accordingly, and as you have not demonstrated that it would be in the interest of justice for the Board to upgrade your discharge as a matter of clemency, 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