



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

CRS
Docket No: 10237-08
7 December 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 16 October 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 17 August 1987, and were commissioned as a lieutenant (junior grade) on 9 June 1995. You were promoted to lieutenant on 1 July 1999. You appeared at nonjudicial punishment proceedings on 25 November 2002. You were found to have wrongfully used cocaine during August 2002, and were awarded a letter of reprimand as punishment for that offense. On 7 November 2003 a Board of Inquiry found that you had not committed misconduct due to drug abuse and voted to retain you in the Navy. On 1 September 2004 you appeared at nonjudicial punishment proceedings and were found to have wrongfully used cocaine during July 2004. The punishment awarded consisted of restriction for 30 days and a punitive letter of reprimand. On 3 November 2004 you tendered a resignation for the good of the service in lieu of administrative separation processing for misconduct and substandard performance of duty. The Assistant Secretary of the Navy for Manpower and Reserve Affairs approved your request on 20 December 2004, and directed that you be separated from the Navy by reason of misconduct with a discharge under other than honorable conditions. You were so discharged on 31 January 2005.

The Board found no merit in your request to set-aside the nonjudicial punishments or to remove related documents from your record. In this regard, the Board concluded that the officers who conducted the nonjudicial punishment proceedings acted reasonably in determining that you had wrongfully used cocaine, and that they imposed appropriate punishments. The Board concluded that you did not submit sufficient credible evidence to establish that you did not commit the offenses for which you were punished. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.


The Board did not consider whether your characterization of service or reason for separation should be changed, since you have not exhausted an available administrative remedy by applying to the Naval Discharge Review Board (NDRB) for such relief. You may do so by submitting the attached DD Form 293 to the NDRB.

The Board did not consider your requests for removal of nonjudicial punishment-related fitness reports and failures of selection for promotion, or for the convening of a special selection board, because those issues are within the purview of the Board's Performance Section. Your case will be referred to that section and assigned a new docket number to allow appropriate tracking and review of that portion of your application.

The Board did not consider your request for removal of time lost because there is no lost time reflected in your DD Form 214.

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