



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

TAL
Docket No: 4242-09
12 March 2010

[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 3 March 2010. 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.

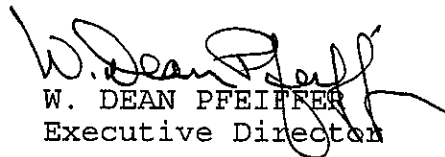
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps and began a period of active duty on 9 July 1979 at age 18. On 22 May 1981, you received nonjudicial punishment (NJP) for failure to obey a lawful order by possessing alcoholic beverages in the barracks. On 19 May 1982, you were apprehended by civil authorities for driving under the influence (DUI). On 1 May 1983, you were apprehended by civil authorities for homicide. You pled no contest to the charge of second degree murder and were found guilty. On 14 June 1983, you were sentenced to 15 years in the custody of the North Carolina Department of Corrections. On 21 July 1983, administrative separation action was initiated by reason of misconduct due to a civil conviction. You elected to waive your rights to consult counsel, submit a statement or have your case heard by an administrative discharge board (ADB). On 4 August 1983, your commanding officer forwarded his recommendation that you be discharged under other than honorable (OTH) conditions for misconduct. On 23 August 1983, the separation authority directed an OTH discharge by reason of misconduct due to civil conviction. On 29 August 1983 you were so discharged.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in a civil conviction and a sentence of 15 year confinement. Finally, members of the armed services who are subject to conviction by civil authorities and, if convicted, are discharged. 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