



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

TJR
Docket No: 3038-10
26 January 2011

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 25 January 2011. The names and votes of the members of the panel will be furnished upon request. 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 reenlisted in the Navy on 18 December 1992 after nearly 11 years of prior honorable service. During this period, you underwent a series of evaluations for your pre-service medical condition, specifically, Hodgkin's disease. You were also diagnosed with major depression, cocaine and alcohol dependence, and a narcissistic personality disorder.

You continued to serve without disciplinary infraction until 21 May 1993, when you began a period of unauthorized absence (UA). On 28 June 1993, while in a UA status, you were apprehended by civil authorities and charged with assault with a deadly weapon (battery). However, the following day, you were returned to military custody, thus terminating a 38 day period of UA. Less than a month later, on 19 July 1993, you began a 17 day period of UA that was not terminated until you were apprehended by civil authorities on 6 August 1993.

On 23 January 1994 you were again apprehended by civil authorities after forcing your spouse, at gun point, to take you to a store to cash a \$30 check. Subsequently, you were returned to military custody. On 31 January 1994 a Navy drug laboratory reported that your urine sample tested positive for cocaine. On 22 November 1994 you were notified of pending administrative separation processing by reason of misconduct due to commission of a serious offense, specifically, kidnapping; and drug abuse. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). On 5 December 1994 an ADB recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense and drug abuse.

On 14 February 1995 your commanding officer also recommended discharge under other than honorable conditions by reason of misconduct. This recommendation stated, in part, as follows:


(Member) has been arrested for conspiracy to steal, assault, carrying a concealed weapon, kidnapping, robbery, and resisting arrest. He was pending a general court-martial for the foregoing offenses and possession of drug paraphernalia, purchasing and using cocaine, and unauthorized absences. Because of his medical condition, the charges were withdrawn and he was referred to an ADB for administrative processing.

As a result of the foregoing, the discharge authority approved these recommendations and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct, and on 7 April 1995, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your period of satisfactory service, medical conditions, and desire to upgrade your discharge. It also considered your assertions that you did not receive adequate counsel and that you suffered from a severe mental illness and post traumatic stress disorder (PTSD). Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive drug and alcohol related misconduct in both the civilian and military communities. Further, there is no evidence in the record, and you submitted none, to support your assertions. Finally, even if a mental illness or PTSD existed at the time of your service, such conditions do not excuse your serious misconduct, so you were responsible for your actions. Accordingly, your application has been denied.

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