



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

TAL
Docket No: 5280-10
31 January 2011



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 26 January 2011. 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.

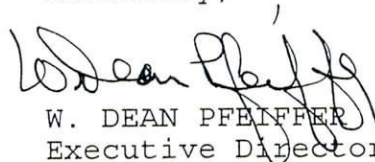
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted on in the Navy and began a period of active duty on 5 October 1987 at age 19. You received nonjudicial punishment (NJP) on three occasions for unauthorized absence (UA) from your unit, two instances of failure to obey an order, and two instances of assault. After you second NJP, you were counseled regarding your misconduct and warned that further offenses could result in administrative separation. You were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. You waived your rights to consult counsel, submit a statement or have your case heard by an administrative discharge board (ADB). On 28 June 1990, you received NJP for UA from your appointed place of duty. Your commanding officer forwarded his recommendation that you be discharged under other than honorable (OTH) conditions by reason of misconduct. The separation authority directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 3 August 1990 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 four NJPs. The Board noted that you waived the right to an ADB, your best opportunity for retention or a better characterization of service. Finally, there is no provision of law or in Navy regulations that allows for recharacterization of service due solely to the passage of time. 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