



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

SJN
Docket No: 06352-10
4 April 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 29 March 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 reenlisted in the Navy on 18 March 1992 after serving over 18 years of honorable service. The Board found that on 27 May 1992, you were convicted by special court-martial (SPCM) of dereliction of duty by wrongfully sexually harassing a female servicemember in a military work environment. You were sentenced to confinement, a reduction in paygrade, and a forfeiture of pay. Subsequently, administrative discharge action was initiated by reason of misconduct due to commission of a serious offense. You elected to consult counsel and have your case heard before an administrative discharge board (ADB). On 10 August 1992, the ADB recommended that you be separated from the naval service with a general discharge by reason of misconduct due to commission of serious offense. On 19 October 1992, your commanding officer concurred with the ADB's findings and forwarded his recommendation to the separation authority that you receive a general discharge. On 24 November 1992, the discharge authority directed a general discharge by reason of misconduct. You were so discharged on 7 December 1992.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your 18 years of prior honorable, medical issues, and last period of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given your conviction by SPCM of a very serious offense. Finally, the Board also noted that you were fortunate to receive a general discharge since a discharge under other than honorable conditions is often directed when an individual is discharged for misconduct. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you may be eligible for veterans' benefits that accrued during your prior period of service. Whether or not you are eligible for benefits based on either period of service is a matter under the cognizance of the Department of Veterans Affairs (DVA). If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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 PREIFFER
Executive Director