



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

BJG
Docket No: 6882-10
16 March 2011

MR NICHOLAS C SCHIAVO
2700 MARSTON CT
NORMAN OK 73072

Dear Mr. Schiavo:

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 15 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

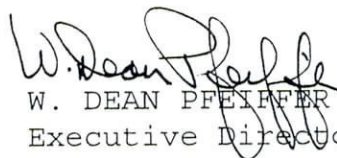
You reenlisted in the Navy on 14 September 1989 after more than four years of honorable service. On 9 July 1993, you were referred to a special court-martial for wrongfully paying to have the orders of a junior female Sailor changed, adultery (two specifications), fraternization with a student, and disobeying a lawful order. Your record is incomplete, but it appears that you then requested a discharge under other than honorable (OTH) conditions for the good of the service to avoid trial by court-martial for the offenses listed above. At that time, you would have consulted with qualified military counsel

and acknowledged the adverse consequences of receiving such a discharge. The separation authority approved your request for a discharge under OTH conditions. On 17 August 1993, you were separated with a discharge under OTH conditions for the good of the service to avoid trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your youth, prior honorable service, combat tour in southwest Asia, and remorse. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to your serious acts of misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. It was also clear to the Board that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. You are advised that no discharge is upgraded due merely to post service good conduct or the passage of time. In view of the above, 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