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

REC
Docket No: 09157-10
24 August 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 24 August 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. The Board also considered the advisory opinion from the Office of the Judge Advocate General (OJAG), dated 17 August 2011, a copy of which is enclosed.

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.
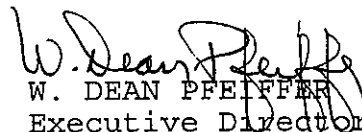
You enlisted in the Navy and began a period of active duty on 15 September 1976, at age 18. On 8 November 1976, the commanding officer at recruit training command approved a waiver for you to remain on active duty based on the results of a preliminary background investigation which disclosed your pre-service civilian arrests and drug use. You failed to disclose these incidents on your in-processing paperwork. On 21 April 1977, you received nonjudicial punishment (NJP) for being absent from your appointed place of duty. On 6 May 1977, you received NJP for disobeying a superior commissioned officer, and breach of the peace. On 6 August 1977, you received NJP for failure to obey a general order, and assault. On 22 October 1977, you received NJP for disobeying a lawful order. On 3 November 1977, you were arrested by the Brazilian authorities for public drunkenness, resisting arrest, and assaulting a police officer, and were banned from entry into the country. On 23 November 1977, you received NJP for being absent from your appointed place of duty, being disrespectful toward a petty officer, being incapacitated for the performance of duty, and wrongful possession of

marijuana. On 3 February 1978, the discharge authority informed your command that any additional misconduct would result in an administrative discharge. Your misconduct continued and on 13 February 1978, you were arrested by the Charleston, South Carolina, police for shoplifting. On 23 June 1978, you received your sixth NJP for two occasions of failure to go to your appointed place of duty, and violating a lawful general order. On 25 July 1978, you were released from active duty with a void enlistment.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your overall record of service, and the advisory opinion. Nevertheless, the Board concluded these factors were not sufficient to warrant a change in your characterization of service based on your fraudulent entry, and serious misconduct. The Board noted that you were fortunate to have received a void enlistment, as you could have been processed for misconduct and have received an other than honorable discharge. 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

Enclosure

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