



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

TJR
Docket No: 13231-10
28 April 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 26 April 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.

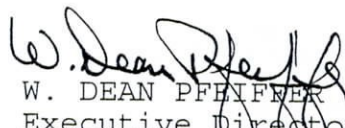
After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 28 October 2008 at age 20 and served without disciplinary incident until 7 May 2010, when you received nonjudicial punishment (NJP) for assault with intent to inflict pain. The punishment imposed was a forfeiture of pay for two months, restriction and extra duty for 45 days, and a reduction to paygrade E-1. Shortly thereafter, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). Subsequently, your commanding officer recommended discharge under honorable conditions by reason of misconduct due to commission of a serious offense as evidenced by the NJP. On 12 May 2010 the discharge authority approved this recommendation and directed your commanding officer to issue you a general discharge by reason of misconduct, and on 13 May 2010, you were so discharged and assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, period of satisfactory service, desire to upgrade your discharge and change your narrative reason for separation and reenlistment code. It also considered your statements provided in support of your request. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge or to change your narrative reason for separation or reenlistment code because of the seriousness of your misconduct. Further, you were given an opportunity to defend yourself and perhaps receive a better characterization of service, but waived your procedural right to present your case to an ADB. Finally, Sailors separated by reason of misconduct normally receive discharges under other than honorable conditions, and as such the Board noted that you were fortunate to receive a general discharge. 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