



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

TJR
Docket No: 13721-10
12 January 2011

[REDACTED]

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

The Board noted you received nonjudicial punishment (NJP) for failure to obey a lawful order, specifically because you were driving under the influence of alcohol or recklessly operating a motor vehicle on 17 April 2010 when apprehended, and refusing a breathalyzer test. The Board further noted that your civilian community offense of driving under the influence on 15 August 2009, which occurred approximately eight months prior to the foregoing offenses, was judicially dismissed in civil court. However, this dismissal was in no way related to the NJP you received in the military community.


The Board concluded that your refusal to take a breathalyzer test did not negate the offenses for which you received NJP in April 2010 (failure to obey a lawful order by driving under the influence and drunken and reckless operation of a motor vehicle on 17 April 2010). The Board concluded that your commanding officer's decision to impose this NJP was appropriate and that it was administratively and procedurally correct as written and filed. The Board further concluded that removal of the NJP or

modification of the charges therein is not warranted, and that such action would be unfair to your peers, against whom you will compete for promotions and assignments. The Board also noted that you accepted NJP and did not appeal the findings of guilt. 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