



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

SJN
Docket No: 01042-11
9 November 2011

[REDACTED]

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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 8 November 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.

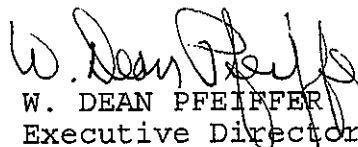
You enlisted in the Marine Corps and began a period of active duty on 16 October 2001. The Board found that you served without incident until 18 April 2004, when you were convicted by special court-martial (SPCM) of disrespect, assault, disobedience, insubordinate conduct, and misbehavior before the enemy. You were sentenced to confinement, a forfeiture of pay, a reduction in paygrade, and a bad conduct discharge (BCD). You received the BCD on 25 January 2008 after appellate review was completed. On 18 August 2010, the Navy Discharge Review Board (NDRB) conducted a documentary review of your discharge and found it to be proper as issued.

The Board, in its review of your record and application, carefully weighed all potentially mitigating factors, such as your youth, desire to upgrade your discharge, post service medical diagnosis, contention that you suffered from an undiagnosed mental defect at the time of your misconduct, and

supporting documentation you submitted. Nevertheless, based on the information currently contained in your record, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge given your SPCM conviction of very serious offenses. With regard to your contention of an undiagnosed mental defect, as stated in the NDRB's letter of 30 September 2010, the determination of mental competency was addressed through the legal appeals process. The U.S. Court of Appeals for the Armed Forces upheld the lower court's findings that you were responsible for your conduct at the time of the actions and were competent to stand trial. 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