



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1212-99

8 July 1999

[REDACTED]

Dear [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 7 July 1999. 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 found that you enlisted in the Navy at age 17 on 21 January 1959 for a minority enlistment. The record reflects that you were advanced to FA (E-2) and served only five months without incident. During the 16 month period from June 1959 to October 1960, you received seven nonjudicial punishments and were convicted by a special court-martial. Your offenses consisted of failure to go to your appointed place of duty, three brief periods of unauthorized absence (UA) totalling about 12 hours, an 18-day period of UA, dereliction in the performance of your duties, failure to observe reveille, possession of clothing that had not been properly re-stenciled, and failure to muster with your duty section.

On 31 January 1961 you were convicted by a second special court-martial of three periods of UA totalling about 30 days, possession of a blank armed forces identification card, and breaking restriction. You were sentenced to confinement at hard labor for three months, forfeitures of \$55 per month for three

months, and a bad conduct discharge. The convening authority approved the sentence but reduced the forfeitures to \$30 per month for three months. On 16 March 1961 you waived your right to restoration to duty and requested that the discharge be executed. The Navy Board of Review affirmed the findings and the sentence on 22 March 1961 and you received the bad conduct discharge on 5 May 1961.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 38 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given your record of seven NJPs and two special court-martial convictions. The Board noted the aggravating factor that you waived your right to restoration to duty, the one opportunity you had to earn a discharge under honorable conditions. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. You have provided neither probative evidence nor a convincing argument in support of your application. The Board believed that you were guilty of too much misconduct in 28 months of service to warrant an upgrade, and concluded that the discharge was proper and no change is warranted. 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