



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6828-98

27 May 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 19 May 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 Naval Reserve on 27 August 1979 for eight years in the Active Mariner Program at age 17. You were ordered to active duty on 22 October 1979 for a period of three years. You were advanced to SA (E-2) and subsequently changed your rate to RMSA.

On 9 June 1980, you were admitted to a naval hospital with a diagnosis of concussion. You were discharged from treatment on 23 June 1980 with a diagnoses of mild concussion, recovered; and syncopal episode, etiology undetermined, not considered unfitting for duty. However, you were returned to the hospital by military ambulance on 11 July 1980 due to a syncopal attack. You were issued temporary additional duty orders on 21 July 1980 to report to National Naval Medical Center (NNMC) no later than 23 July 1980 for admission. However, you failed to comply with the orders and were reported in an unauthorized absence (UA) status. You remained absent until you were apprehended by civil authorities on 26 July 1980. You were then returned to the NNMC.

On 8 August 1980, a medical board recommended that you be placed on six months of limited duty for episodic loss of consciousness, not otherwise specified, and sporadic right temporal headaches. However on 11 August 1980 you were reported UA again and remained absent until you surrendered on 28 March 1981.

You reported to the NNMC on 3 April 1981 for a reevaluation of your limited duty status. A detailed neurologic evaluation was completely normal. You were given final diagnoses of orthostatic dizziness and right temporal headaches (benign cephalalgia). The medical board recommended your return to full duty. You were advised of the medical board's findings and requested return to duty without any restrictions.

On 16 April 1981, you received nonjudicial punishment (NJP) for being UA from 23-26 July 1980, and 11 August 1980 to 28 March 1981. During the months of July and August 1981, you received two more NJPs for two periods of UA totalling about 12 days and absence from your appointed place of duty.

On 4 August 1981, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and elected to present your case to an administrative discharge board (ADB). Three days later, you agreed to waive an ADB provided you were recommended for a general discharge. However, the convening authority disapproved the conditional waiver. You appeared before an ADB on 8 September 1981 with counsel. The ADB found you had committed misconduct due to frequent involvement and recommended discharge under other than honorable conditions. The commanding officer concurred with the ADB findings and the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct due to frequent involvement with military authorities. You were so discharged on 18 December 1981.

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 17 years since you were discharged. The Board noted that you enlisted under a name different from the one shown on your application. The Board also noted your contentions to the effect that at time of your service you were being treated for a head trauma and this condition should have received more consideration at the time of a summary court-martial. There is no evidence in available records that you were ever convicted by a summary court-martial. You may have confused the ADB proceedings for a court-martial.

The Board concluded that the foregoing factors and contentions were insufficient to warrant a recharacterization given your record of three NJPs, one of which was for a UA which lasted for more than seven months. The Board noted that this seven month UA was during the time you were to be placed in a limited duty status. You have provided no evidence of any circumstances which would have justified such a prolonged period of UA. Although the record clearly indicates you were being treated for a concussion and syncopal episodes, there is no evidence these conditions rendered you incapable of distinguishing right from wrong, or excused you of responsibility for your actions, or constituted sufficient mitigation for your misconduct. The Board 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