



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 7422-98

9 April 1999

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 6 April 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 1 August 1972 at the age of 18. Your record shows that on 13 April 1973 you received nonjudicial punishment (NJP) for three incidents of absence from your appointed place of duty and three incidents of disobedience. The punishment imposed was restriction for 30 days, reduction to paygrade E-1, and forfeitures totalling \$100. The reduction was suspended for six months. On 19 September 1973 you received NJP for a 31 day period of unauthorized absence (UA). The punishment imposed was forfeitures totalling \$300, restriction for 30 days, and reduction to paygrade E-1. You received your third NJP on 2 October 1973 for disobedience, failure to obey a lawful order and absence from your appointed place of duty. The punishment imposed was confinement for 30 days.

Your record further reflects that on 31 May and again on 10 October 1974 you received NJP for three incidents of disrespect and failure to obey a lawful order. On 27 November 1974 you began a 359 day period of UA that was not terminated until 21 November 1975. On 9 December 1975 you submitted a written

request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. Your record shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 26 January 1976 your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 6 February 1976 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded. The Board further considered your contention that you need help with your life. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct, which resulted in five NJPs, your lengthy period of UA, and especially your request for discharge to avoid trial for this offense. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Given all the circumstances of your case the Board concluded your discharge was proper as issued 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