



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

ELP
Docket No. 6666-00
9 March 2001

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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 7 March 2001. 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 on 7 February 1957 for a minority enlistment at age 17. The record reflects that you were advanced to SA (E-2) and served for 10 months without incident. However, during the nine-month period from December 1957 to September 1958 you were convicted by two special courts-martial and received a nonjudicial punishment (NJP). Your offenses consisted of a 35-day period of unauthorized absence (UA), failure to obey a lawful order, and unspecified violations of Articles 86 and 134 of the Uniform Code of Military Justice.

On 8 December 1958 you were convicted by a third special court-martial of missing movement and a 24-day period of UA, from 20 October to 12 November 1958. You were sentenced to confinement at hard labor for six months, forfeitures of \$55 per month for six months and a bad conduct discharge. The supervisory authority approved the sentence but reduced the forfeitures to \$50 per month. The Navy Board of Review affirmed the findings

and the sentence on 15 January 1959 but also recommended that the bad conduct discharge be suspended for an appropriate probationary period. However, on 18 March 1959, you waived your right to request restoration to duty and requested that the bad conduct discharge be executed. You stated "I couldn't go straight for the rest of my enlistment." Clemency was denied and you received the bad conduct discharge on 1 May 1959.

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 41 years since you were discharged. The Board noted your contentions that you have been responsible citizen, raised five children, and have had no felony convictions. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP and three special courts-martial convictions. The Board noted the aggravating factor that you waived your right to restoration to duty and stated that you did not believe you could stay out of trouble for the rest of your enlistment. This was the one opportunity you had to earn a discharge under honorable conditions. It appeared to the Board that a request for restoration would have been approved in view of the Navy Board of Review recommendation. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. A Federal Bureau of Investigation report obtained by the Board indicates that your post-service conduct has been marred by convictions of automobile theft (Dyer Act) and a class A theft (misdemeanor). 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