



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

ELP
Docket No. 2116-01
2 July 2001

[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 Navy Records, sitting in executive session, considered your application on 26 June 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.

You enlisted in the Navy on 31 October 1973 for four years at age 18. The record reflects that you were advanced to AA (E-2) and served for six months without incident. However, during the three month period from April to July 1974, you received two nonjudicial punishments (NJP) for seven instances of failure to go or absence from your appointed place of duty, two instances of failure to obey a lawful order, and three brief periods of unauthorized absence (UA) totalling about two days.

On 2 January 1975 you were convicted by special court-martial of two periods of UA totalling about 88 days, from 5 August to 29 October and 8-11 November 1974; failure to obey a lawful order; two specifications of assault; disrespect; resisting apprehension; and communicating a threat. You were sentenced to confinement at hard labor for three months, forfeitures of \$226 per month for three months, and a bad conduct discharge. On 20 February 1975 the supervisory authority approved the sentence but suspended the unserved portion of confinement for a period of

six months. You were released from confinement on 18 March 1975 and placed on appellate leave on 7 May 1975. The Navy Board of Review affirmed the findings and the sentence on 15 August 1975. You received the bad conduct discharge on 10 May 1976

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, letters of reference, and the fact that it has been more than 25 years since your discharge. The Board considered your contentions that you came from an unstable background and that you went UA after your girlfriend broke up with you because you had given her a sexually transmitted disease. You claim that the additional offenses of which you were found guilty arose from a racially motivated incident, the punishment was too severe and reviewing authorities ignored the military judge's recommendation that the bad conduct discharge be suspended. You also point out that since your discharge you have earned an associate's degree, are pursuing a bachelors degree, and are a licensed emergency medical technician.

The Board concluded that the foregoing factors, contentions and claims were insufficient to warrant recharacterization of your discharge given your record of two NJPs and your conviction by special court-martial of a UA of nearly three months and the serious offenses of assault. The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence should be reduced as a matter of clemency. In other words, claims that you were not guilty of the charges, the charges were racially motivated, the sentence was too harsh, the convening authority did not approve the military judge's recommendation, or mistakes of law were made, cannot be considered by the Board because that is the purpose of an appeal. Your contention that the additional charges were the result of racial prejudice is neither supported by the evidence of record or by any evidence submitted in support of your application. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Additionally, a report from the Federal Bureau of Investigation obtained by the Board indicates that after discharge, you were convicted of robbery, attempted armed robbery, criminal trespass, negligent driving, driving without a license, driving under the influence, unlawful use of a weapon, and residential burglary. The Board concluded that the discharge was proper and no clemency 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