



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

TJR
Docket No: 2433-02
9 October 2002

[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 8 October 2002. 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.

You enlisted in the Navy on 14 February 1978 at the age of 19. On 24 October 1978 you received nonjudicial punishment (NJP) for a day of unauthorized absence (UA), absence from your appointed place of duty, and failure to obey a lawful order. The punishment imposed was a \$100 forfeiture of pay and a suspended reduction in rate.

On 19 December 1979 you received NJP for a four day period of UA and were awarded extra duty and restriction for 10 days. Approximately five months later, on 28 May 1980, you received your third NJP for two specifications of failure to obey a lawful order and four periods of absence from your appointed place of duty. The punishment imposed was a \$250 forfeiture of pay and restriction and extra duty for 20 days.

You were then UA during the 196 day period from 3 July 1980 to 15 January 1981. Subsequently, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA. Prior to submitting this request for discharge, you conferred with a

qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 4 March 1981 your request for discharge was granted and on 12 March 1981 you received an other than honorable discharge in lieu of trial by court-martial. 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.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, your numerous character reference statements, and the statement from the American Legion provided in support of your case. The Board further considered your contention of good post service conduct. However, a Federal Bureau of Investigation (FBI) report states that since discharge, you have been convicted by civil authorities on several occasions. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of your frequent misconduct and the lengthy period of UA which resulted in your request for discharge. The Board believes that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also 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. 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