



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

TJR
Docket No: 4968-01
7 January 2002

[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 3 January 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.

The Board found you enlisted in the Navy on 7 August 1969 at the age of 18. Your record reflects that on 15 May 1970 you received nonjudicial punishment (NJP) for a 28 day period of unauthorized absence (UA). The punishment imposed was a reduction to paygrade E-1 and correctional custody for 30 days. On 21 July 1970 you were convicted by summary court-martial (SCM) of a 14 day period of UA and failure to obey a lawful order. You were sentenced to confinement at hard labor for one month. On 14 October 1970 you were convicted by SCM of a 54 day period of UA. You were sentenced to confinement at hard labor for 15 days, restriction for 30 days, and a \$80 forfeiture of pay.

On 20 October 1970 you were notified of pending administrative separation action by reason of unfitness. At that time you waived your rights to consult with legal counsel, submit a statement in rebuttal to the separation, and to present your case to an administrative discharge board. Subsequently, your commanding officer recommended an other than honorable discharge by reason of misconduct due to frequent involvement of a

discreditable nature with military authorities. The discharge authority approved the foregoing recommendation and directed an other than honorable discharge by reason of unfitness, and on 29 October 1970 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity. The Board also considered your contentions that you were punished twice for the same offense, thus becoming a victim of double-jeopardy, and that your court-martial conviction did not warrant an other than honorable discharge. Additionally, the Board considered your contention that your diagnosed schizophrenia was the cause of your periods of UA. The Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge because of the serious nature of your repetitive and lengthy periods of UA which resulted in NJP and two court-martial convictions. The Board also noted that there is no evidence in the record, and you submitted none to support your contention that you were schizophrenic or, if you were, that this disorder contributed to your misconduct. Your contention pertaining to double jeopardy is without merit. 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