



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

TJR
Docket No: 5828-01
11 February 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 5 February 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 31 January 1967 at the age of 18. Your record shows that on 12 August 1969 you began a 757 day period of unauthorized absence (UA) that was not terminated until you were apprehended by the Federal Bureau of Investigation (FBI) on 8 September 1971. On 16 December 1971 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 also 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. The Board found your request for discharge was granted and 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 27 January 1972 you received an undesirable discharge.

On 19 July 1977, under the Department of Defense Discharge (DOD) Special Discharge Review Program (SDRP), the characterization of your undesirable discharge was changed to general under honorable conditions. However, this recharacterization does not entitle you to benefits administered by the Department of Veterans' Affairs (DVA).

Your record further reflects that on 28 June 1978 you submitted a written request to the Naval Discharge Review Board (NDRB) for a personal appearance in which you sought further clemency in regards to the characterization of your discharge in order to receive veterans benefits. However, you and your counsel failed to appear before that Board.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and the letter from the Disabled American Veterans in support of your case. However, the Board found the evidence and materials submitted were not sufficient to warrant favorable action given your lengthy period of UA. The Board concluded that you received the benefit of your bargain with the Navy when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as a punitive discharge. Further, the Board noted that your characterization of service was changed to general under honorable conditions under the provisions of SDRP, but concluded that a further change, which would make you eligible for DVA benefits, was not warranted. 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