



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

ELP  
Docket No. 6286-01  
18 January 2002

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 16 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 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 26 March 1969 for four years at age 18. The record reflects that you were advanced to SA (E-2) and served for 14 months without incident. However, during May and June 1970, you received two nonjudicial punishments (NJP) and were convicted by summary court-martial. Your offenses consisted of two instances of disrespect, failure to obey a lawful order, resisting apprehension, and dereliction of duty.

On 2 December 1970 you were convicted by special court-martial of a six-day period of unauthorized absence (UA), disrespect towards an officer, three specifications of disrespect towards a petty officer, robbery of an MRSN (E-3) of fifteen cents, assault, using obscene language towards a female, and breaking restriction. You were sentenced to confinement at hard labor for five months, forfeitures of \$88 per month for six months, and a bad conduct discharge.

On 12 January 1971 a review by the convening authority noted that both counsels in their concluding remarks on findings, argued matters not in evidence. However, the convening authority found that you were not prejudiced by this error. The convening authority approved the sentence but reduced the confinement to 45

days and the forfeitures to four months. Thereafter, the Navy Court of Military Review affirmed the findings and the sentence. On 23 February 1971 you waived the right to request restoration to duty and requested that the bad conduct discharge be executed. You received the bad conduct discharge on 17 May 1971.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, good post-service conduct, letters of reference, and the fact that it has been nearly 30 years since you were discharged. The Board noted your contentions to the effect that your case was prejudiced by errors and that you were unjustly accused. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and convictions by a summary court-martial and a special court-martial. The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, your claim of prejudicial error or that you were unjustly accused cannot be considered by the Board. The Board noted the aggravating factors that you waived your right to request restoration to duty, the one opportunity you had to earn a discharge under honorable conditions. The Board concluded that you were guilty of too much misconduct in only 22 months of service to warrant recharacterization. The Board thus concluded that the discharge was proper and no clemency was 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