



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

TJR
Docket No: 6320-01
19 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 12 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 30 December 1965 at the age of 21. Your record reflects that you served for two years and eight months without disciplinary incident. This period included a tour of duty in Vietnam that lasted for slightly more than a year.

On 23 August 1968 you were convicted by summary court-martial (SCM) of a 38 day period of unauthorized absence (UA) and were sentenced to hard labor for 45 days and a \$50 forfeiture of pay.

On 7 November 1969 you were convicted by SCM of two periods of UA totalling 21 days and were sentenced to confinement at hard labor for 14 days and a reduction to paygrade E-2. On 22 January 1969 you received nonjudicial punishment (NJP) for an 18 day period of UA and were awarded restriction and extra duty for 45 days.

Your record further reflects that on 14 October 1970 you were convicted by general court-martial (GCM) of two periods of UA totalling 486 days. You were sentenced to confinement at hard

labor for six months, reduction to paygrade E-1, and a \$900 forfeiture of pay.

Your record also reflects that during the period from 5 February 1971 to 24 February 1972, a period of 385 days, you were in a UA status. On 6 March 1972, after undergoing a psychiatric evaluation, you were diagnosed with a personality disorder and recommended for an administrative separation. On 10 March 1972 you submitted a written request for an undesirable 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 at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an undesirable discharge. 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 28 April 1972 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, service in Vietnam, and your contention that because of your personality disorder you could not adjust to duty in the United States after your tour of Vietnam. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your frequent and lengthy periods of UA which totalled about 475 days, and which also resulted in two court-martial convictions, an NJP, and your request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you 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