



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

TJR
Docket No: 8151-01
20 March 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 March 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 Naval Reserve on 7 February 1978 at the age of 17 and began a period of active duty training on that same day. On 26 July 1978 you were honorably released from active duty training. On 30 August 1978 you began a period of extended active duty.

Your record reflects that on 9 and 29 November 1978 you received nonjudicial punishment (NJP) for a three day period of unauthorized absence (UA) and absence from your appointed place of duty.

The record further reflects that during the period from 30 April 1979 to 28 April 1980 you were in a UA status on two occasions for 363 days. During this period of UA you also broke restriction and were declared a deserter. On 30 July 1980 you were referred for court-martial for the foregoing periods of UA. On 19 August 1980 you received NJP for a day of UA and were awarded a \$200 forfeiture of pay and restriction for 10 days.

Subsequently, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the two periods of UA totalling 363 days. Your record 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. Your request for discharge was granted and your commanding officer was directed to issue you an other than honorable 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 17 September 1980 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, post service conduct, and your contention that your discharge was a result of a recently diagnosed disabling condition. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your repetitive misconduct and lengthy periods of UA, specifically, the lengthy periods of UA which resulted in 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