



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

TJR
Docket No: 1395-03
31 October 2003

[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 28 October 2003. 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.

You reenlisted in the Navy on 20 September 1989 after three years of prior honorable service.

On 30 April 1990 you were convicted by special court-martial (SPCM) of a 66 day period of unauthorized absence (UA) and failure to go to your appointed place of duty. You were sentenced to confinement for 65 days, 20 days of which were suspended for 12 months, reduction to paygrade E-2, and a \$600 forfeiture of pay, a portion of which was also suspended for 12 months.

On 18 June 1990 you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). However, on 3 August 1990, you submitted a written statement rescinding your request for an ADB. On 17 August 1990 your

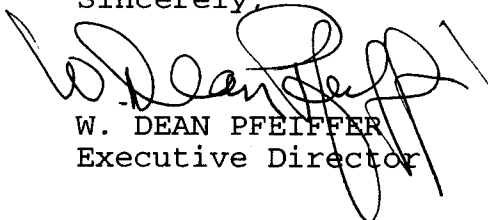
commanding officer recommended separation under other than honorable conditions by reason of misconduct due to commission of a serious offense. On 20 September 1990 the discharge authority then directed separation under other than honorable conditions by reason of misconduct, and on 2 October 1990 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and your assertion that your Certificate of Discharge or Release from Active Duty (DD Form 214) incorrectly lists two periods of lost time. It also considered your assertion that you were not represented by legal counsel before waiving your rights prior to your discharge proceedings. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your lengthy period of UA. Further, the Board noted that the time lost recorded on your DD Form 214 was correct, in that you were in a UA status from 16 December 1989 to 20 February 1990 and were confined from 30 April to 5 June 1990. Finally, the Board noted that the record shows that you consulted counsel after you were notified of the administrative separation action, but did not do so immediately prior to waiving your right to an ADB. However, applicable directives only require that a service member be afforded the right to consult with counsel when separation action is initiated. 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