



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

SMW  
Docket No: 9826-06  
29 March 2007

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 March 2007. 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.

On 15 November 1972 you enlisted in the Navy at age 18. During the period from 24 July 1973 to 11 January 1974 you received two nonjudicial punishments (NJP's) and were convicted by a summary court-martial (SCM). Your offenses included insubordination, failure to obey a lawful order, unlawful sale or disposition of property, and use and possession of marijuana.

During the period from 23 February to 23 July 1974 you were in an unauthorized absence (UA) status on two occasions totaling about 132 days. You subsequently requested an undesirable discharge to avoid trial by court-martial for these records of UA. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 26 August 1974 the separation authority approved your request for an undesirable discharge. On 6 September 1974 you were separated with an undesirable discharge for the good of the service to avoid trial by court-martial. 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.

The Board, in its review of your entire record, carefully considered all mitigating factors, such as your youth. The Board also considered your contentions that your discharge was based on a few months of bad conduct, and personal problems contributed to your misconduct. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge due to the repetitive misconduct, some of which was drug-related. Furthermore, 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. Regarding your contentions, the record shows that your misconduct began about eight months after you enlisted and continued for a year, and there is no evidence in the record to show that personal problems caused or contributed to your misconduct. But even if there were such evidence, that would not excuse your misconduct. Finally, 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