



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

TJR  
Docket No: 6380-07  
17 April 2008

[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 15 April 2008. 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 enlisted in the Navy on 1 March 1973 at age 17. About seven months later, on 26 October 1973, you were convicted by summary court-martial (SCM) of two periods of unauthorized absence (UA) totalling 54 days, and sentenced to a \$50 forfeiture of pay.

On 26 March 1974 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for a 78 day period of UA, absence from your appointed place of duty, being drunk on duty, and assault. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted, and on 26 April 1974 you received an other than honorable discharge in lieu of trial by court-martial. As a result, 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 and application, carefully weighed all potentially mitigating factors, such as your youth and the passage of time. It also considered your assertion of medical and mental problems being the cause of your misconduct and discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct, which resulted in SCM and your lengthy periods of UA, which also resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Finally, there is no evidence in the record, and you submitted none, to support your assertion. 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