



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

SJN
Docket No: 08812-07
19 September 2008



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 16 September 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 30 May 1973 at age 18. On 24 July 1973 and 5 September 1974, you received nonjudicial punishment (NJP) for sleeping on watch and disobedience. On 28 March 1975, you were convicted by special court-martial (SPCM) of two specifications of assault. You were sentenced to confinement at hard labor, a forfeiture of pay, and a reduction in paygrade. On 16 June 1975, you received a third NJP for a seven day period of unauthorized absence (UA).

On 21 July 1975, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for absence from your appointed place of duty, two days of UA, disobedience, and communicating a threat. 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. Subsequently, your request for discharge was granted and, on 4 August 1975, you received an

undesirable discharge in lieu of 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 application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and character statements accompanying your application. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your three NJP's, conviction by SPCM, and especially your request for discharge to avoid trial. 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. 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,


For W. DEAN PFEIFFER
Executive Director