



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

CRS  
Docket No: 10732-07  
18 November 2008

[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 13 November 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 21 May 1976. You received nonjudicial punishment on 13 September and 14 October 1976 for offenses that included possession of marijuana, disrespect, and unauthorized absence. On 12 April 1977 you submitted a written request for discharge for the good of the service in lieu of trial by court-martial for an unauthorized absence of 124 days. Prior to submitting this request you conferred with a qualified military lawyer who advised you of your rights and warned of the probable adverse consequences of receiving a discharge under other than honorable conditions. Your request was approved by the discharge authority, and on 3 May 1977, you were issued a DD Form 794, Certificate of Discharge Under Other than Honorable Conditions. As a result of administrative error, you were released from active duty and transferred to the Individual Ready Reserve (IRR) on that date, rather than discharged; however, the character of service entered in item 9e of your DD Form 214 is "under other than honorable conditions". You were discharged from the Navy Reserve on 28 September 1982 at the expiration of your enlistment, with a characterization of service of "under honorable conditions".

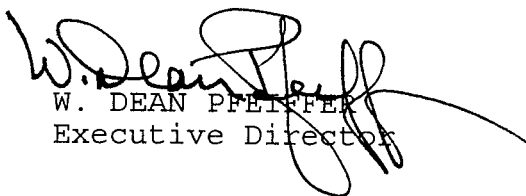
The Board carefully evaluated all potentially mitigating factors

in your case, such as your youth and the unsubstantiated contention to the effect that you were under duress when you submitted your request for discharge, but concluded that those factors are insufficient to granting your request for corrective action. The Board concluded that your period of active service was properly characterized as under other than honorable conditions in view of your extensive disciplinary record. In addition, the Board believes that considerable clemency was extended to you when your request for discharge was approved, as you avoided the possibility of a conviction by court-martial, confinement at hard labor, and a punitive discharge. You received the benefit of your bargain and should not be permitted to change the terms of the bargain now. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are not entitled to a DD Form 214 for the period 4 May 1977-28 September 1982 because you did not serve on active duty during that period.

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

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