



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

SMS
Docket No: 11021-07
21 August 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 20 August 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.

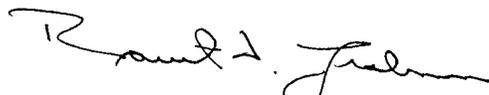
On 30 August 1974, you enlisted in the Navy at age 23. During the period 15 to 16 June 1975, you were in an unauthorized absence (UA) status, but it appears that no disciplinary action was taken. On 26 June 1975, you had nonjudicial punishment (NJP) for about a three hour period of UA. On 23 September 1975, you began a UA that ended on 4 December 1975, when you were apprehended by civilian authorities on charges of public intoxication. You subsequently requested an undesirable discharge (UD) for the good of the service to avoid trial by court-martial for the 72 day period of UA. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 10 February 1976, you had NJP for a brief instance of UA, disrespect, failure to obey a lawful order, and being intoxicated while on duty. On 6 February 1976, the separation authority approved your request for a UD. On 20 February 1976,

you were separated with a UD 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 potential mitigation, such as your youth. The Board also considered your contentions that hearing loss and an abusive officer contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your repetitive misconduct. Regarding your contentions, there is no evidence in the record to support them. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial 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 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,



ROBERT D. ZSALMAN
Acting Executive Director