



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

SMS
Docket No: 3441-08
9 January 2009

[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 7 January 2009. 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 29 April 1991, you enlisted in the Navy Reserve at age 18 and began a period of active service on 10 July 1991. On 23 July 1992, you had nonjudicial punishment (NJP) for two instances of unauthorized absence (UA) totaling about seven days. On 23 July 1992, a psychiatric evaluation diagnosed you as having an adjustment disorder. You were also counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an other than honorable (OTH) discharge. On 1 October 1992, you had NJP for a two day period of UA.

On 1 October 1992, your commanding officer initiated administrative separation by reason of misconduct due to minor disciplinary infractions, and recommended a general characterization of service. In connection with this processing, you acknowledged the separation action.

During the period 27 October to 15 November 1992, you were in a UA status on two occasions that totaled about 16 days. On 15 November 1992, you began another period of UA. On 9 December 1992, the separation authority approved the discharge recommendation, but the separation action was subsequently suspended due to your UA status. On 2 January 1993, you surrendered after being in a UA status for about 48 days. Based on the information currently contained in the record, it appears that you subsequently requested an OTH discharge for the good of the service to avoid trial by court-martial for the 48 day period of UA. At that time, you would have consulted with counsel and acknowledged the consequences of receiving such a discharge. Apparently, the separation authority approved your request for an OTH discharge. On 12 March 1993, you were separated with an OTH discharge for the good of the service to avoid trial by court-martial and assigned an RE-4 reenlistment code. 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 and psychiatric evaluation. The Board also considered your contention that personal problems contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge or changing the reenlistment code due to your misconduct that continued even after you were counseled and subsequently recommended for a general discharge. Regulations direct assignment of an RE-4 reenlistment code to members who are discharged for the good of the service to avoid trial by court-martial. Regarding your contention, the record does show that you had personal problems, but that does not excuse your misconduct. 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,


For W. DEAN PFEIFFER
Executive Director