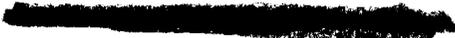




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMS
Docket No: 4345-08
5 February 2009



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 4 February 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 4 April 1973, you enlisted in the Navy at age 17 with parental consent. On 31 July 1973, you had nonjudicial punishment for three instances of unauthorized absence (UA) that totaled about 10 days. You were also counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an undesirable discharge (UD).

During the period 17 August to 17 October 1973, you were in a UA status, a period of about 61 days. On 5 November 1973, you began another period of UA. On 24 December 1973, you reached the age of 18. On 24 January 1974, you were apprehended by civilian authorities after being in a UA status for about 80 days. On 11 February 1974, you requested an UD for the good of

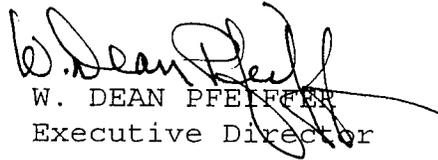
the service to avoid trial by court-martial for the two periods of UA that totaled 141 days. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 21 February 1974, the separation authority approved your request for a UD. On 27 February 1974, you 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 you were not given the proper information when you requested a UD and you should have been discharged due to a reduction in force. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your lengthy UA's. Regarding your contentions, the record shows that you requested a UD for the good of the service to avoid trial by court-martial after you consulted qualified counsel and acknowledged the consequences of receiving such a discharge, and there is no evidence in the record to show that you were eligible for consideration to be discharged due to a reduction in force. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. 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,


W. DEAN PFEIFFER
Executive Director