



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

SMS
Docket No: 5980-08
26 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 25 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 30 December 1975, you enlisted in the Navy at age 18. On 25 February 1977, you had nonjudicial punishment (NJP) for possession of marijuana, a 20 day period of unauthorized absence (UA), and missing the movement of your ship. You were also counseled regarding your misconduct and warned that further infractions could result in disciplinary action or administrative separation. On 20 and 27 May 1977, you had NJP for a brief instance of UA and dereliction in the performance of your duties.

On 27 May 1977, your commanding officer initiated administrative separation by reason of misconduct due to frequent discreditable involvement. In connection with this processing, you acknowledged that separation could result in an other than honorable (OTH) discharge and waived the right

to have your case heard by an administrative discharge board. Apparently, the separation authority approved the discharge recommendation and directed an OTH discharge. On 3 June 1977, you were transferred to a stateside duty station to await separation, but the separation authority subsequently suspended the discharge action on 22 June 1977, and directed a general discharge upon completion of 12 months of probation.

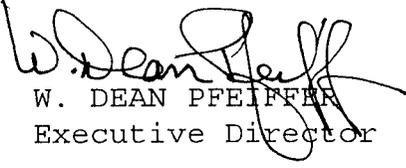
On 15 July 1977, you began a UA that ended on 9 May 1978, a period of about 298 days. On 15 June 1978, you requested an OTH discharge for the good of the service to avoid trial by court-martial for the 298 day period of UA. Based on the information currently contained in the record, it appears that the separation authority subsequently approved your request for an OTH discharge. On 11 July 1978, you were separated with an OTH discharge 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 contention that alcoholism contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your service due to the seriousness of your misconduct that continued even after your administrative separation was suspended. Regarding your contention, there is no evidence in the record to show that you were diagnosed as being an alcoholic or abused alcohol, but even if there was such evidence, it would 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,



W. DEAN PFEIFFER
Executive Director