



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

TAL  
Docket No: 9498-09  
18 June 2010

[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 16 June 2010. 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.

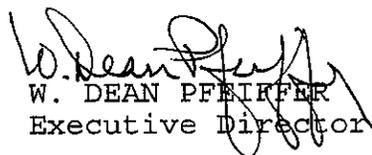
You reenlisted in the Navy on 25 May 1976 after more than three years of prior honorable service. On 20 December 1977, you were convicted by summary court-martial (SCM) for three instances of unauthorized absence (UA) from your unit that totaled 67 days. On 16 January 1978 you were UA until you surrendered on 15 February 1978, a period of 30 days. On 22 March 1978, you were UA until you surrendered on 19 May 1978, a period of 58 days. Based on the information currently contained in your record it appears that you submitted a written request to be discharged for the good of the service to avoid trial by court-martial for the last two periods of UA. You conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your commanding officer forwarded his recommendation that you be discharged for the good of the service with an other than honorable (OTH) discharge. On 7 July 1978, you received the OTH discharge for the good of the service. 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 application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted on one SCM, periods of UA that totaled over five months and request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for discharge 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 should not be permitted to change it now. Finally, there is no provision of law or in Navy regulations that allow for recharacterization of service due solely to the passage of time. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you may be eligible for veterans' benefits which accrued during your prior period of honorable service. However, your eligibility is a matter under the cognizance of the Department of Veteran Affairs (DVA). In this regard, you should contact the nearest DVA office concerning your rights, specifically, whether or not you are eligible for benefits based on this period of service.

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