



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

JRE
Docket No. 05764-10
11 April 2011

[REDACTED]

[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 31 March 2011. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You served on active duty in the Navy from 23 March 1979 to 18 August 1982, when you received a bad conduct discharge pursuant to the approved sentence of a special court-martial which convicted you of theft of property from a shipmate. In determining an appropriate sentence, the court also considered two records of nonjudicial punishment you received for unauthorized absence, failure to obey an order, and larceny.

Although you sustained a significant injury to your elbow while on active duty, and you might have been unfit for duty by reason of physical disability at the time of your discharge, you were not entitled to disability separation or retirement because your

conviction and sentence took precedence over and precluded disability processing. Accordingly, and as you have not demonstrated that it would be in the interest of justice for the Board to upgrade your bad conduct discharge, 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