



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

TJR
Docket No: 6165-10
8 April 2011

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 5 April 2011. The names and votes of the members of the panel will be furnished upon request. 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 enlisted in the Navy on 16 September 1976 at age 20 and immediately began a period of active duty. You served for about five months without disciplinary incident, but on 17 February 1977, you received nonjudicial punishment (NJP) for stealing \$387. The punishment imposed was restriction and extra duty for 45 days and a \$374 forfeiture of pay. Shortly thereafter, on 24 February 1977, you began a period of unauthorized absence (UA) that was not terminated until 16 March 1977. As a result, you were referred for trial by court-martial for this 22 day period of UA. However, on 24 March 1977, you began another period of UA that was not terminated until 3 January 1989. During this period of UA totalling 4,239 days, you were also declared a deserter.

Your record contains an administrative remarks entry dated 23 January 1989 which states, in part, that the Navy declined to prosecute you for the period of UA from 24 March 1977 to 3 January 1989 for "failure to toll the statute of limitations." However, this period of UA would continue to be considered lost time for administrative purposes and would serve as the basis for the denial of remuneration. As such, you were to be discharged for misconduct due to commission of a serious offense and were not recommended for reenlistment.

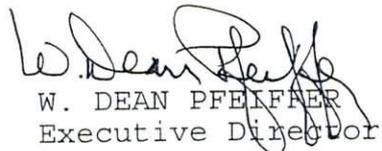
Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense as evidenced by the foregoing period of UA totalling 4,239 days. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 26 January 1989 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. On 20 February 1989 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct and on 18 April 1989 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, desire to upgrade your discharge, and the passage of time. It also considered your assertion that your misconduct resulted from untreated acute alcoholism. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which resulted in NJP, and your repetitive and lengthy periods of UA, which were dismissed with prejudice to the government due to noncompliance with the statute of limitations. Further, you were given an opportunity to defend yourself but waived the procedural right to present your case to an ADB. Finally, there is no evidence in the record, and you provided none, to support your assertion of alcoholism. Accordingly, your application has been denied.

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