



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

TJR  
Docket No: 5898-12  
13 July 2012

[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 10 July 2012. 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 at age 24 and began a period of active duty on 2 November 1988. You served for about nine months without disciplinary infraction, but during the period from 26 August to 4 September 1989, you were in an unauthorized absence (UA) status for nine days. The disciplinary action taken, if any, for this misconduct is not reflected in the record. Less than 10 months later, on 20 July 1990, you received nonjudicial punishment (NJP) for absence from your appointed place of duty.

The record reflects that during an approved leave period you were shot and the bullets remained in your body. This action did not occur in the line of duty, was not the result of enemy action, and was the result of your own misconduct. Upon your return from this leave period, on 18 February 1991, you were escorted to a medical center for evaluation. Subsequently, you were directed to report to a naval hospital for further evaluation and/or medical care. However, you failed to obey the foregoing order and instead of reporting to a naval hospital, on 25 February

1991, you began yet another period of UA. This period of UA was not terminated until you were apprehended by civil authorities on 3 July 1991, charged with various drug related offenses, and subsequently placed on probation. Nonetheless, you chose not to return to military custody. However, on 6 March 1992, you were again apprehended by civil authorities and returned to military custody, thus terminating a 375 day period of UA. Following a medical evaluation/examination you were found fit for an administrative separation.

Although the discharge documentation is not in your record, it appears that you requested discharge for the good of the service to avoid trial by court-martial for the foregoing 375 day period of UA. Regulations required that before making such a request, an individual must be advised by military counsel concerning the consequences of such a request. Since the record shows that you were discharged by reason of good of the service to avoid trial on 13 May 1992, the Board presumed that the foregoing occurred in your case. Because you requested discharge in lieu of trial, you avoided the possibility of a punitive discharge and confinement at hard labor.

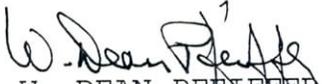
The Board, in its review of your entire record and application, which included supporting documentation, carefully weighed all potentially mitigating factors, such as your youth, period of satisfactory service in the Army National Guard, desire to upgrade your discharge, and assertion that since your gun-shot injury occurred while you were on approved leave, you are entitled to veterans benefits and the characterization of your discharge should be changed to honorable. Nevertheless, the Board concluded these factors and your assertion were not sufficient to warrant recharacterization of your discharge because of your repetitive misconduct in both the military and civilian communities, repeated and lengthy periods of UA, and your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board further 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. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your assertion. Accordingly, your application has been denied.

The Board believes that under current regulations you may be eligible for veterans' benefits which accrued during your first period of service with the Army National Guard. Whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA), and you should contact the nearest office of the DVA concerning your right to apply for

benefits. If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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