



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

ELP
Docket No. 118-99
14 May 1999

[REDACTED]

Dear [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 12 May 1999. 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.

The Board found that you reenlisted in the Navy on 28 February 1956 for four years as an SN (E-3). At the time of your reenlistment, you had completed nearly three years of prior active service.

The record reflects that you served without incident until 19 June 1958 when you were delivered to civil authorities on an arrest warrant for a felony charge of sexual perversion. You appeared in civil court on 2 July 1958 for an additional charge of annoying and molesting children. You entered a plea of guilty to a morals charge on 14 October 1958 and were sentenced to 90 days in the county jail and a fine of \$50, and were placed on probation for one year.

On 28 October 1958, the commanding officer advised the Bureau of Naval Personnel (BUPERS) of your conviction and recommended

discharge. You were then advised of your procedural rights and declined to submit a statement in your own behalf. An enlisted performance evaluation board was convened in BUPERS on 26 January 1959 and recommended that you be separated with an undesirable discharge by reason of unfitness due to your conviction of an offense involving moral turpitude. The Chief of Naval Personnel approved the recommendation and directed an undesirable discharge by reason of unfitness. You were so discharged on 11 February 1959.

Regulations then in effect authorized the separation of individuals with an undesirable discharge who were convicted by civil authorities of an offense for which the maximum penalty under the Uniform Code of Military Justice was confinement in excess of one year or which involved moral turpitude.

In its review of your application, the Board weighed all potentially mitigating factors such as your limited education, prior honorable service, and the fact that it has been more than 40 years since you were discharged. The Board noted your contentions to the effect that you were told by your attorney you should not have been discharged, you should have put in for a medical discharge, and that you were not a "screw-up" but were mentally ill and spent 18 months in a mental institution after your discharge. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given the serious offense of which you were convicted by civil authorities. You have provided no evidence to support your contention that you were mentally ill or suffered from a condition which rendered you incapable of distinguishing right from wrong. Your discharge was accomplished in compliance with applicable regulations and there is no indication of procedural errors which would have jeopardized your rights. The Board concluded that the discharge was proper and no change it warranted. 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