



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

ELP
Docket No. 806-99
28 June 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 23 June 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 enlisted in the Navy on 24 August 1979 for four years as an SN (E-3). You were advanced to HM3 (E-4) on 16 July 1981.

The record reflects that you served without incident until 23 October 1981 when you received nonjudicial punishment (NJP) for a three day period of unauthorized absence from 24-27 July 1981, a 75 minute absence from your appointed place of duty, and communicating a threat. Punishment imposed consisted of a forfeiture of \$140 and 14 days of restriction. The forfeiture was suspended for a period of six months and you did not appeal the punishment.

You continued to serve without further incident and were honorably released from active duty on 23 August 1983 and transferred to the Naval Reserve. You received an honorable discharge upon completion of your obligated service on 29 August 1988.

In its review of your application the Board conducted a careful search of your record for any mitigating factors which would warrant removal of the three days of lost time and the 5 October 1981 NJP, and the award of a Good Conduct Medal. However, no justification for such actions could be found. The Board specifically noted the lengthy explanation of your version of the events and circumstances which led to the imposition of NJP on 5 October 1981 and the documentation submitted in support of your application. Other than your uncorroborated statement, the Board has no way of verifying the veracity of your contentions and claims now, 18 years later, since the NJP evidence considered in your case no longer exists. The Board is reluctant to substitute its judgment for that of the NJP authority who was on the scene, heard your testimony and that of available witnesses, and was privy to evidence not available to the Board. The Board could find no evidence that the NJP authority abused his discretionary authority when he imposed NJP on 5 October 1981. Given the relatively light punishment that was awarded, it appeared to the Board that the NJP authority carefully weighed your testimony and the evidence presented. Absent evidence of abuse of discretion, the Board concluded there was no compelling basis for setting aside the NJP and removing it from your record. Since there is no basis for removing the NJP, there is also no basis for removal of the lost time or the award of the Good Conduct Medal. 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

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Veterans of Foreign Wars