TRG
Docket No: 1295-99
30 June 1999

Dear

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 29 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 31 January 1974
at age 22. At that time you had completed about three years of
service in the National Guard. The record shows that you
received nonjudicial punishment on one occasion for an
unauthorized absence of about five days.

Subsequently you were an unauthorized absentee from 21 May to 15
July 1974. Your service record shows that on 19 July 1974 you
submitted a written request for a discharge under other than
honorable conditions in order to avoid trial by court-martial for
the foregoing period of unauthorized absence totaling about 55
days. Your record also shows that prior to submitting this
request you conferred with a qualified military lawyer at which
time you were advised of your rights and warned of the probable
adverse consequences of accepting such a discharge. The Board
found that your request was granted on 15 August 1974 and, as a
result of this action, you were spared the stigma of a court-
martial conviction and the potential penalties of a punitive
discharge and confinement at hard labor. You were discharged on
20 August 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your contentions that upon enlistment in the Navy you were improperly reduced from your pay grade of E-5 in the National Guard and you should not have had to attend Navy recruit training because of your prior service. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for an unauthorized absence of about 55 days. The record shows that when you signed the enlistment contract, you knew that you would be reduced to pay grade E-3 and would be required to attend recruit training. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is 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

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