



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

ELP
Docket No. 1888-01
27 August 2001

[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 Navy Records, sitting in executive session, considered your application on 22 August 2001. 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.

You enlisted in the Naval Reserve on 14 September 1994 for eight years at age 25. On 14 November 1994 you and were ordered to active duty for four years in the Training and Administration of Reserves Program.

The record reflects that on 26 June 1995 you were advised that you did not meet the Navy's weight and body fat standards and would be enrolled in the command's remedial physical conditioning program until the next official physical readiness test (PRT). You were warned that if you had more than two failures within the next four years, you would be processed for administrative separation.

You served for the next 16 months without incident. However, during the six month period from October 1996 to March 1997, you received two nonjudicial punishments (NJP) for communicating a threat, insubordination, dereliction of duty and malingering.

On 4 April 1997 you were advised that you had accumulated your third PRT failure in a 4-year period due to exceeding weight and body fat limits. Your body fat at that time was measured at 39 percent.

On 28 August 1997 you were formally counseled regarding disrespectful conduct that culminated in an assault of your roommate. You also expressed anger at a commissioned officer by telling a petty officer that you might injure the officer. The counseling statement noted that you were a malingerer by not participating in the command's physical readiness program, but at the same you were conducting sparring sessions and exhibitions in martial arts.

On 10 September 1997 you received your third NJP for dereliction of duty. Punishment imposed is not shown in the record.

On 12 November 1997 you were notified that you were being recommended for a general discharge by reason of weight control failure and misconduct due to commission of a serious offense. You were advised of your procedural rights. You waived the right to have your case reviewed by the general court-martial convening authority but did submit a statement in your own behalf. In that statement, you asserted that separation was improper because you were not counseled or given an opportunity to overcome your deficiencies, were forced to go to mandatory physical training despite having a light duty chit, and that your PRT record was inaccurate. In his recommendation for discharge, the commanding officer stated that you had a long history of conflicts with your co-workers and disrespect to peers and superiors. In addition to your problems in the work center, you failed to maintain weight standards. On 3 December 1997 the commanding officer directed a general discharge by reason of misconduct due to commission of a serious offense. You were so discharged on 8 December 1997.

On 21 December 2000 the Naval Discharge Review Board denied your request for an upgrade of your discharge on 21 November 2000.

In its review of your application the Board conducted a careful search for any mitigating factors which might warrant a recharacterization of your general discharge. Although your application does not clearly set forth your contentions, the Board concluded that the characterization of your discharge was appropriate given your record of three NJP's. The Board believed you received considerable consideration when the commanding officer directed a general discharge, since most individuals with records such as yours are discharged under other than honorable conditions. Although you could have been discharged for weight control failure, regulations authorized the commanding officer to

direct separation for the most appropriate reason, which was misconduct. The Board thus concluded the discharge was proper 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