



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

ELP
Docket No. 2397-01
13 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 8 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 Navy on 11 June 1998 for four years at age 21. On the first day of recruit training, you were advised that you were being retained despite a fraudulent induction as evidenced by your failure to disclose a dependent child and a conviction for driving without a license. You were warned that if it was later found that you failed to disclose additional information, you could be processed for administrative separation.

The record reflects that you were reported in an unauthorized absence (UA) status from 29 December 1998 until 7 January 1999. No disciplinary action is shown in the record for this 10 day period of UA. However, on 4 January 1999 charges were preferred against you for signing a false official statement and writing 22 bad checks totaling about \$1628.57. The charges were referred to a special court-martial and you returned from UA on 7 January 1999.

On 15 April 1999 you submitted a request for an other than honorable discharge for the good of the service to escape trial by court-martial on the foregoing charges. In your request, you admitted that you were guilty of the offenses charged. 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. On 30 April 1999 the discharge authority approved your request and directed an other than honorable discharge for the good of the service. You were so discharged on 12 May 1999.

On 1 February 2001, the Naval Discharge Review Board denied your request for an upgrade of your discharge.

In its review of your application the Board carefully searched for any mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted your contentions to the effect that the bad checks were due to transferring the bank account you were using in recruit training to a bank near your new command; that you were harassed while on legal hold by a chief petty officer and assigned to menial tasks; a Navy lawyer said you were not going to be tried because of evidence brought to the attention of the military judge; and that a new defense lawyer advised you to accept an administrative discharge since you would not go to the brig and would receive a general discharge. You claim that when you signed the DD Form 214 you noted the other than honorable discharge and RE-4 reenlistment code and brought these errors to the attention of the personnelman, but were told to "deal with it." You claim that you were told at the time of discharge that the DD Form 214 would be mailed to you at home, but you never received it. You contend that you called the command and were told the DD Form 214 was on the way, but you did not receive it until June 2000 after you contacted your congressman for assistance. You also claim that several weeks after your discharge, Naval Criminal Investigative Service (NCIS) agents came to your place of work and arrested you for being a deserter from the JOHN F. KENNEDY, and that your protests that you had been discharged were ignored because you did not have a copy of the your DD Form 214 to show them. You claim they took you to the ship in handcuffs, treated you like a criminal and forced you to get underway with the ship, but you were released several days later when the NCIS found out that you were in fact discharged from the service.

The Board concluded that the foregoing contentions and claims were insufficient to warrant recharacterization of your discharge given the offenses for which you accepted discharge rather than face trial by court-martial. The Board noted that discharge for the good of the service is an administrative discharge and is

rarely under honorable conditions. Furthermore, you requested discharge and admitted your guilt to the charges, and your signature acknowledges you understood that the discharge would be under other than honorable conditions. 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 with the Navy when your request for discharge was granted and you should not be permitted to change it now. Your numerous contentions and claims are neither supported by the evidence of record nor by any evidence submitted in support of your application. Given all the circumstances of your case, the Board concluded your 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