



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

ELP
Docket No. 2537-01
17 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 15 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 28 January 1981 for four years at age 18. The record reflects that you were advanced to RMSA (E-2) and served for eight months without incident. However, during the 17 month period from May 1981 to October 1982 you received four nonjudicial punishments (NJP). Your offenses consisted of two instances of failure to obey a lawful order, communicating a threat, use of provoking speech, and disrespect. As a result of these NJPs you were reduced in rate to RMSR (E-1).

The record further reflects that you were reassigned to a new command on 4 February 1983, and were subsequently advanced again to RMSA (E-2). On 6 July 1983 you were formally counseled regarding your prior misconduct of disobedience, communicating a threat, use of provoking speech, and disrespect. You were warned that failure to take corrective action could result in administrative separation under other than honorable conditions.

You continued to serve without further incident and were advanced to RMSN (E-3). However, during the three month period from December 1983 to February 1984 you received two more NJPs for two instances of use of provoking speech and gestures, and two brief periods of unauthorized absence totaling about 70 minutes.

On 17 February 1984 you were notified that administrative discharge action was being initiated by reason of misconduct due to a pattern of misconduct. You were advised of your procedural rights and told that if discharge was approved, it could be under other than honorable conditions. After consulting with legal counsel, you waived the right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. The Commander, Naval Military Personnel Command approved the recommendation and you were so discharged on 9 March 1984.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been more than 17 years since you were discharged. The Board noted your contention to the effect that you will be graduating this year with a bachelor of science degree in nursing, and an upgrade of your discharge would permit you to work in a Department of Veterans Affairs (DVA) hospital. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of six NJPs. The Board noted that after you were reassigned to a new command, you were warned about your prior misconduct. However, you failed to learn from your earlier disciplinary experience and your continued misconduct demonstrated a willful disregard of Navy rules and regulations. The Board noted the aggravating factor that you waived the right to present your case to an ADB, the one opportunity to show why you should be retained or discharged under honorable conditions. The Board concluded that you were guilty of too much misconduct to warrant recharacterization to honorable or under honorable conditions. Your desire to work in a DVA hospital does not provide a valid basis for recharacterizing service. 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