



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

ELP
Docket No. 3334-01
7 September 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 6 September 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.

Your enlisted in the Navy on 12 February 1963 for four years at age 18. The record reflects that you were advanced to EMFN (E-3) and served 19 months without incident. However, during the four month period from September 1964 to January 1965 you were convicted by two special courts-martial for two periods of unauthorized absence (UA) totalling about 103 days, missing ship's movement, and breaking restriction. Both periods of UA were terminated by your apprehension.

On 4 February 1965 you underwent a psychiatric evaluation and were diagnosed with an anti-social personality disorder. The examining psychiatrists opined that you were not suffering from a psychosis or psychoneurosis, could distinguish right from wrong, and were an unlikely candidate for rehabilitation.

On 13 April 1965 you were convicted by a third special court-martial of a 52 day period of UA, from 7 February to 31 March 1965, and breaking restriction. This period of UA was also terminated by your apprehension. You were sentenced to confinement at hard labor for six months, forfeitures of \$55 per month for six months, reduction in rate to EMFR (E-1), and a bad conduct discharge. The convening authority approved the sentence but reduced the forfeitures to \$48 per month for six months and the supervisory authority further reduced the forfeitures to \$43. The Navy Board of Review approved the findings and the sentence on 13 May 1965.

On 2 August 1965 you waived the right to request restoration to duty and requested that the bad conduct discharge be executed. You stated "I have been locked up for about seven months and I have a lot of family problems so I do not desire to return to duty." You received the bad conduct discharge on 3 September 1965.

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 36 years since you were discharged. The Board noted your contentions to the effect that your multiple UAs were due to your wife being committed to a state hospital because of drugs, and you had no one to take care of a newborn son. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your three convictions by special courts-martial. Your lost time due to UA and military confinement totaled 375 days. Your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board noted the aggravating factor that each of the prolonged periods of UA were terminated only by your apprehension and you waived the right to restoration to duty, the one opportunity you had to earn a discharge under honorable conditions. The Board concluded that you were guilty of too much misconduct to warrant recharacterization to honorable or under honorable conditions. 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