



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

TJR
Docket No: 4580-01
26 December 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 Naval Records, sitting in executive session, considered your application on 11 December 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 3 June 1974 at the age of 18. Your record reflects that on 19 November 1974 you received nonjudicial punishment (NJP) for breach of the peace and were awarded a suspended forfeiture of pay. Shortly thereafter, on 24 December 1974, you were arrested by civil authorities and charged with robbery. On 25 March 1975 you were convicted by civil authorities of the foregoing charge and sentenced to 10 years in prison.

Your record further reflects that on 11 June 1975, while in the custody of civil authorities, you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB) and to submit statements in rebuttal to the discharge. On 9 October 1975 an ADB recommended you be issued an undesirable discharge by reason of misconduct due to civil conviction. On 23 October 1975 your commanding officer also recommended an undesirable discharge by reason of misconduct. On 11 November

1975 the discharge authority approved the foregoing recommendations and directed an undesirable discharge. On 17 February 1976, while in the custody of civil authorities, you received an undesirable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, statement from the American Legion in support of your case, and your contention that you did not know that you had received an undesirable discharge. The Board also considered your contentions that you were deprived of adequate legal counsel at the ADB and that your misconduct was not service-connected. However, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge because of the serious nature of your misconduct in both the military and civilian communities.

Concerning your contention of inadequate assistance of counsel, the Board noted that this Sixth Amendment right does not apply to administrative proceedings. However, to the extent that Article 27b of the Uniform Code of Military Justice and applicable directives required such assistance at the ADB, the Board concluded that you received it. At the ADB your military counsel introduced letters from you and your parents in your defense. There was little more your counsel could do. You had served only slightly more than six months prior to your arrest by civil authorities. During this time, you received an NJP. Further, applicable regulations in effect at the time stated that an individual convicted of a civil offense involving violence or in which the individual is sentenced to confinement for a year or more. Both of these factors were present in your case. Accordingly, the Board concluded that even if your counsel had introduced other evidence pertaining to your service, the outcome would be the same.

The Board also rejected your contention that the undesirable discharge was improper because it was not service connected. There was an is no such requirement in applicable directives. However, the Board noted that your offense was service connected to the extent that your conviction and sentence to confinement rendered you unable to complete your enlistment.

Given all the circumstances of your case, the Board concluded 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

Copy to: American Legion