



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

ELP
Docket No. 7065-00
20 March 2001

[Redacted]
[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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 14 March 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.

The Board found that you enlisted in the Navy on 9 May 1973 for four years at age 19. The record reflects that you were advanced to HM3 (E-4) and served without incident until 16 September 1975, when you were reported in an unauthorized absence (UA) status for a period of six days. Although this absence was not excused no disciplinary action is shown in the record.

It appears that on 19 February 1976, favorable action was recommended on your request for reenlistment. You provide no evidence as to the final disposition on your request or why you were submitting a request to reenlist early. On 8 March 1976 you submitted another special request for a no-cost transfer to the Norfolk Naval Shipyard dispensary due to a hardship in commuting from your home to the naval air station dispensary. The chain of command recommended approval of the request, but again the final results are unknown.

You went UA again on 19 July 1976 and remained absent until apprehended on 24 August 1976. Although the NJP does not appear in the record, a court memorandum reflects that you received NJP on 9 September 1976. The punishment included restriction and a suspended reduction in rate to HN (E-3).

You broke restriction on 13 September 1976 and began two prolonged periods of UA, from 13 September 1976 to 2 March 1977 and 18 March to 10 August 1977.

On 16 September 1997, the discharge authority approved discharge under other than honorable conditions for the good of the service in lieu of trial by court-martial. The discharge processing package containing your request for discharge and other pertinent documentation is not on file in the record. You were discharged under other than honorable conditions on 6 October 1977.

On 14 June 1979, the Naval Discharge Review Board denied your request for recharacterization of your discharge.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, more than two years of satisfactory service, and the fact that it has been more than 23 years since you were discharged. The Board noted your contention to the effect that your misconduct was due to the pressure of family problems and poor decisions you made. The Board also noted that your record does not contain the discharge processing documentation and you provide no probative evidence concerning any of the facts and circumstances which prevented you from returning from two prolonged periods of UA sooner than you did. Absent the discharge documentation, a presumption exists that the action taken by the Navy was appropriate and proper. This appears to be supported by the NDRB's review of your case in June 1979. Therefore, the Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four periods of UA, for one of which you received NJP, and that you apparently requested discharge rather than face trial by court-martial for two other periods of UA totalling 315 days. The Board believed that considerable clemency was extended to you when your request for discharge was approved. By this action, you escaped the possibility of confinement at hard labor and a punitive discharge. While you now realize you made some poor decisions 23 years ago, that realization does not provide a basis for recharacterizing service. 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. The Board thus concluded that 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.

The original documents you submitted in support of your application are returned for your safekeeping.

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

Enclosures