



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

TRG
Docket No: 1447-01
4 April 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 3 April 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 6 July 1994 at age 17. The record shows that you then served in a satisfactory manner for over two years. On 12 November 1996 you were placed on limited duty following knee surgery. On 27 February 1997 you received nonjudicial punishment for larceny and wrongful appropriation. The punishment imposed included forfeiture of pay and a reduction in rate from DPSN (E-3) to DPSA (E-2). Subsequently, it was determined that you should be discharged due to your physical disability. The performance evaluation for the period 9 August 1997 to 28 January 1998 indicates that you were progressing towards advancement and were not recommended for retention in the Navy. The evaluation comments state as follows:

.... (He) is capable of quality work but does not put forth the effort to consistently produce quality work. Under direct supervision his performance increases to an above average level.

You were honorably discharged on 5 February 1998 and were paid disability severance pay in the amount of \$8,306.40. At that time, you were serving as a DPSA and were assigned an RE-4 reenlistment code.

Concerning the offense that led to the nonjudicial punishment, you state that you were shopping with a friend at the Navy Exchange and that friend switched the price label on an item you purchased. You state that the commanding officer agreed with your superior's recommendation that a punishment which included a suspended reduction in rate was appropriate. You believe an error was made when it was entered as an unsuspended reduction in rate. You have submitted documentation showing that your knee has improved and the doctor believes that you are physically qualified for reenlistment.

The Board noted that there is no documentation in the record to support your contentions concerning the nonjudicial punishment and the punishment imposed. However, the commanding officer obviously believed that an offense occurred which warranted punishment.

Regulations allow for the assignment of an RE-3P or an RE-4 reenlistment code when an individual is discharged due to a physical disability. The Board believed that the nonjudicial punishment, for what appears to be a relatively serious offense, and the final adverse performance evaluation were sufficient to support the assignment of the RE-4 reenlistment code. In addition, the Board noted that regulations require the assignment of an RE-4 reenlistment code in most cases when an individual is discharged in pay grade E-2 after an extended period of active duty.

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