



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

CRS  
Docket No: 2544-02  
9 September 2002

[REDACTED]

[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 4 September 2002. 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 30 September 1974 at age 18. The enlistment contract in the record does not specify that you enlisted under the "buddy program". The record also reflects that you were an unauthorized absentee from 18 August 1975 to 9 January 1976 and from 14 September 1976 to 25 January 1977, a total of 482 days.

While the request is not in your record, it is presumed that you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing periods of absence. It is also presumed that prior to submitting this request, and in accordance with applicable directives, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. It appears that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The record clearly shows that on 28 March 1977 you received an

other than honorable discharge for the good of the service in order to escape trial.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that your enlistment contract was voided when you were not enlisted under the "buddy system". However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge given your request for discharge to avoid trial for unauthorized absences totalling about 16 months. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. In this regard, there is no evidence in the record that you enlisted under the buddy program, and you have provided no evidence to support this contention. The Board thus concluded that 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