



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

TJR
Docket No: 3910-02
11 December 2002



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 10 December 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Navy on 24 January 1969 at the age of 19. You served for nearly three years without disciplinary incident, but on 7 December 1971 you were convicted by summary court-martial (SCM) of an 81 day period of authorized absence (UA). You were sentenced to restriction for a month and reduction to paygrade E-3.

On 4 August 1972 you were referred to a special court-martial (SPCM) for three periods of UA totalling 210 days and breaking restriction. However, on 15 August 1972, you began a 356 day period of UA that was not terminated until 24 August 1973. During this period of UA, you were also declared a deserter. On 4 October 1973 you submitted a written request for an undesirable discharge in lieu of court-martial for the foregoing periods of UA totalling 566 days. This request was denied and on 19 November 1973 you were convicted by SPCM of four periods of UA totalling 566 days. However, these charges were later dismissed due a speedy trial violation.

On 15 February 1974 you were notified of pending administrative separation action by reason of unsuitability. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board, but requested retention in the Navy. On 18 March 1974 you began yet another period of UA. On 10 April 1974 the discharge authority directed separation by reason of unsuitability with a characterization of service as warranted by your service record.

On 19 April 1976, while still in UA status, you were convicted by civil authorities of a fraudulent claim against the United States and sentenced to confinement for a year and a day. However, on 16 July 1976, you were released from civil custody and returned to military authorities. On 20 July 1976 you were referred to SPCM for the 851 day period of UA from 18 March 1974 to 20 July 1976.

On 18 August 1976 you were notified of administrative separation action by reason of misconduct due to civil conviction, at which time you waived your right to consult with legal counsel and to present your case to an ADB. Your commanding officer recommended an undesirable discharge by reason of misconduct due to civil conviction. On 30 August 1976 the discharge authority approved this recommendation and directed an undesirable discharge. On 23 September 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contention that your discharge should be upgraded because you rendered honorable service in the Navy, which included serving during the Vietnam War, for over five years. It also considered your contention that you were UA because you were forced to get married. Nevertheless, the Board concluded recharacterization of your discharge was not warranted because of the seriousness of repetitive and lengthy periods of UA, which totalled 1,142 days, and your misconduct in the civilian community. 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