



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

JRE
Docket No: 7328-02
22 October 2002

[REDACTED]

[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 10 October 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 served on active duty from 27 December 1991 to 25 February 1994, when you were discharged under other than honorable conditions by reason of misconduct. Your service was characterized as under other than honorable conditions based on your commission of a serious offense, namely, assaulting another person with a shotgun. The Board noted that you were not entitled to be processed for separation or retirement by reason of physical disability, because a discharge by reason of misconduct takes precedence over disability evaluation. In addition, it noted that even if you had not been discharged by reason of misconduct, you would not have qualified for disability benefits administered by the Department of the Navy, as your injury was the result of your own misconduct, and not incurred in the line of duty.

The Board rejected your unsubstantiated contentions to the effect that you did not receive appropriate representation from your attorney, or that he improperly encouraged you to waive your right to contest your discharge by requesting a hearing before an administrative discharge board. In the absence of evidence which demonstrates that your discharge by

reason of misconduct was erroneous or unjust, and establishes that your condition was incurred in the line of duty, the Board was unable to recommend any corrective action in your case. 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