TRG
Docket No: 7383-01
7 February 2002

Dear ▮▮▮▮▮▮▮:

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 5 February 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.

You reenlisted in the Navy on 25 October 1989. At that time, you
had completed four years of active duty on a prior enlistment.
During the period 15 April to 30 July 1993, you received
nonjudicial punishment on four occasions. Your offenses were
three periods of unauthorized absence totaling about 54 days,
missing ship's movement and trespassing.

Based on the foregoing record, you were processed for an
administrative discharge by reason of misconduct. In connection
with this processing, you stated "I do not object to this
separation." On 22 September 1993, you received your fifth
nonjudicial punishment for possession of a controlled substance.
Subsequently, the discharge authority approved the recommendation
of your commanding officer that you be discharged for misconduct,
under other than honorable conditions. You were so discharged on
27 October 1993.

In its review of your application the Board carefully weighed all
potentially mitigating factors, such as your prior honorable
service, the character references you submitted attesting to your
recovery from drug addiction and your good citizenship since

then. You desire recharacterization of your discharge and a change in the reenlistment code so that you can again serve in the military. You believe that your discharge should have been upgraded after six months. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given the frequency of your misconduct. The Board noted that there is no basis in the law or regulations that would require the recharacterization of a discharge based solely on the passage of a period of time. The Board concluded that the discharge under other than honorable conditions by reason of misconduct was proper as issued and no change is warranted.

Regulations require the assignment of an RE-4 reenlistment code when an individual is discharged by reason of misconduct. Since you have been treated no differently than others discharged for that reason, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you are eligible for veterans' benefits based on your prior honorable service. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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

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