



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

TJR
Docket No: 10943-02
14 October 2003

[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 7 October 2003. 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 August 1976 at age 17. On 5 and 19 April 1977 you received nonjudicial punishment (NJP) for absence from your appointed place of duty and failure to obey a lawful order.

During the period from 20 April 1977 to 1 June 1978 you were in an unauthorized absence (UA) status on five occasions for a total of 363 days. Although the discharge documentation is not in your record, it appears that you requested discharge for the good of the service to avoid trial by court-martial for the foregoing periods of UA. Regulations stated that such a request could be submitted only if the individual committed an offense that could result in a punitive discharge if tried by court-martial. Additionally, before requesting discharge, an individual had to be advised by military counsel concerning the consequences of such a request. Since you were discharged by reason of good of the service, the Board presumed that these proceedings were followed in your case. Because you requested discharge in lieu of trial, you received the benefit of your bargain when you were

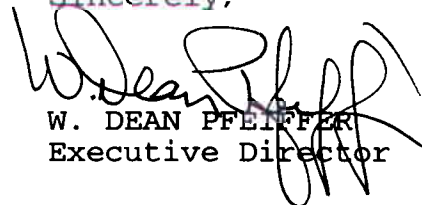
discharged and not tried by court-martial, and on 25 August 1978 you received an other than honorable discharge. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your assertion that you were suffering with depression. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your repetitive and lengthy periods of UA, which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Further, the Board noted that there is no evidence in the record, and you submitted none, to support your contention of depression. 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