



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

CRS
Docket No: 3479-03
4 August 2003

[REDACTED]

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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 30 July 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 11 September 1997 after more than eleven years of prior active service. The record reflects that on 4 November 2001 you were convicted by a summary court-martial of indecent assault on two Sailors. The court sentenced you to reduction from petty officer first class (AD1; E-6) to petty officer second class (AD2; E-5) and restriction for 60 days.

On 22 November 2001 an administrative discharge board recommended that you be separated with an other than honorable discharge by reason of misconduct due to commission of a serious offense. After review by the discharge authority, the recommendation for separation was approved and you were discharged on 6 February 2002 with an other than honorable discharge by reason of misconduct. At that time, you were assigned a reenlistment code of RE-4.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your lengthy period of

prior honorable service, and the contention that you were innocent and that the proceedings of the summary court-martial were improper. However, the Board concluded that these factors were not sufficient to warrant reinstatement or recharacterization of your discharge given the seriousness of the offenses. In this regard, the Board has no authority to disturb the findings or sentence of a court-martial based on claims of legal error.

Applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to misconduct. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reenlistment code.

While the Board can review your reduction in pay grade to AD2 as a matter of clemency, the Board determined that it was an appropriate part of the sentence given the nature of your offenses.

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