



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

TAL  
Docket No: 8933-09  
11 June 2010

[REDACTED]

[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 9 June 2010. The names and votes of the members of the panel will be furnished upon request. 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 and began a period of active duty on 14 July 1976 at age 30. On 10 December 1976, you received nonjudicial punishment (NJP) for unauthorized absence (UA) from your unit and missing ship's movement. On 30 March 1977, you received NJP for a 24 day period of UA from your unit. On 1 April 1977, you were UA from your unit for a period of 169 days until you were apprehended by civil authorities on 17 September 1977. On 28 September 1977 you were again UA from your unit until 2 October 1977, a period of four days. You submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for the foregoing periods of UA totaling 173 days. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 13 December 1977 your request was granted and the commanding officer was directed to issue you an OTH discharge. As a result of this action, you were spared the stigma of a court-martial conviction and the

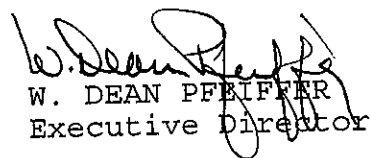
potential penalties of a punitive discharge and confinement at hard labor. On 21 December 1977 you were discharged under OTH conditions.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in two NJPs, lengthy periods of UA, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board 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. Finally, no discharge is upgraded merely because of the passage of time. 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 may be eligible for veterans' benefits which accrued during your prior period of honorable service. However, your eligibility is a matter under the cognizance of the Department of Veteran Affairs (DVA). In this regard, you should contact the nearest DVA office concerning your rights, specifically, whether or not you are eligible for benefits based on this period of service.

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