



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

TJR
Docket No: 2739-10
26 January 2011

[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 20 January 2011. 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 on 21 July 1971 at age 18 and served without disciplinary incident until 29 August 1973, when you were convicted by special court-martial (SPCM) of three periods of unauthorized absence (UA) totalling 59 days. You were sentenced to a \$400 forfeiture of pay, reduction to paygrade E-2, and confinement at hard labor for two months. On 4 October 1973, three days after being released from confinement, you began another period of UA that was not terminated until 1 February 1974. The disciplinary action taken, if any, for this 120 day period of UA is not reflected in the record.

On 4 September 1974 you received nonjudicial punishment (NJP) for an eight day period of UA. On 6 September 1974 you missed the movement of your ship because you were in a UA status that was not terminated until 16 October 1974. As a result, on 17 October 1974, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing 40 day period of UA. 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. Subsequently, your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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 13 December 1974 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and lengthy periods of UA from the Navy, which also resulted in an NJP, a SPCM, and your 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. Finally, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

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