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

ELP
Docket No. 5889-98
19 April 1999

[redacted]

Dear [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 14 April 1999. 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 30 April 1982 for three years as a PN1 (E-6). At the time of your reenlistment, you had completed nearly 10 years of prior active service.

The record reflects that you served without incident until 10 April 1984 when you were convicted by general court-martial of stealing United States government funds in the amount of about $1500 and making a false travel claim in the amount of $1,150. You were sentenced to confinement at hard labor for 30 days, reduction in rate to PNSR (E-1), and a bad conduct discharge. The convening authority approved the sentence on 30 August 1984 and you were placed on appellate leave on 14 November 1984. At the time you were placed on appellate leave, you signed a statement to the effect that if the sentence to a bad conduct discharge was set aside you would be discharged with type of discharge warranted by your service record. Subsequently, the

Navy-Marine Corps Court of Military Review (NMCCMR) affirmed the findings and the sentence of the court-martial.

On 28 February 1985, the Acting Secretary of the Navy (SECNAV) remitted that part of the sentence that extended to a bad conduct discharge and ordered that the unremitted balance of the sentence, which was erroneously ordered executed by the convening authority, be duly executed on 28 February 1985. The Court of Military Appeals denied your petition for review on 6 September 1985. You were honorably discharged by reason of expiration of enlistment on 6 January 1986.

In its review of your application, the Board conducted a careful search of your service record for any mitigating factor which might warrant voiding your discharge and restoring you to active duty. However, no justification for such action could be found. The Board noted your contentions that the original charges were modified on three different occasions, uncharged misconduct allowed into evidence at trial was prejudicial, a motion by the NMCCMR defense attorney was prejudicial, and your willingness and desire to correct your errors were ignored. You assert that if there was an error in the sentence as determined by the Acting SECNAV, then the error was in the severity of the sentence.

The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review of determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, contention that mistakes of law were made cannot be considered by the Board because that is the purpose of appellate review. However, the Board noted that the your specific contentions were addressed by the NMCCMR in its response that affirmed the findings and the sentence. With regard to the Acting SECNAV's action, it appears the convening authority erroneously ordered the sentence executed prior to NMCCMR's review. It further appears that a result of this error the Acting SECNAV believed the sentence was too severe and acted accordingly by remitting the bad conduct discharge. The Board notes that despite the convening authority's erroneous action, SECNAV did not set aside the conviction, but allowed the remaining unremitted portion of the sentence to be executed, even though it had already been carried out.

Trial by general court-martial was warranted by the gravity of the offenses charged. Your conviction and discharge were effected in accordance with applicable law and regulations. Although you had more than 16 years of service when you were discharged, this factor does not provide a valid basis for voiding the discharge and granting you considerable constructive service to transfer to the Fleet Reserve. Further, regulations prohibit the retention of individuals serving in pay grade E-1 after the expiration of their enlistment. 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