



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

TRG
Docket No: 7430-97
13 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 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 6 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 1990 for six years. At that time you had completed over three years of active service. The record shows that you then served until 14 February 1994 with only one nonjudicial punishment for disobedience and drunk driving. On that date you began a period of unauthorized absence which lasted until you were apprehended on 5 May 1994, a period of about 81 days.

The documentation to support the discharge processing is not in your record. However, the DD Form 214 shows that you were discharged for the good of the service. Therefore, the Board assumed that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the 81 day period of unauthorized absence. Regulations require that prior to submitting such a request, you confer with a qualified military lawyer and be advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that when your request was granted you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The record shows that you were discharged under other than honorable conditions on 21 June 1994.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service, the period of good service in your second enlistment and the newspaper article you submitted showing that your wife was arrested by police on a charge of attempted murder. You contend, in effect, that you only became an unauthorized absentee because you were improperly denied leave so that you could assist her. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your lengthy period of unauthorized absence and especially your request for discharge to avoid trial. The Board noted your personal problems but believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board found that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

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