



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No.8530-98

16 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 enlisted in the Navy on 27 January 1971 for four years at age 18. The record reflects that you were advanced to FA (E-2), completed Damage Control "A" School, and changed your rate to DCFA. On 8 July 1971 you extended your enlistment for additional period of 24 months in exchange for immediate advancement to DC3 (E-4).

The record further reflects that you served without incident until 26 June 1972 when you received nonjudicial punishment (NJP) for failure to obey a lawful order. Punishment imposed was 10 days of extra duty.

On 2 March 1973, your command was advised by message that you had surrendered to military authorities at Long Beach after being in an unauthorized absence (UA) status since 0730 that morning. It could not be determined from available records if you were in a leave status prior to surrendering. On the same day, you were issued technical arrest orders to report to your command, the USS PROTEUS (AS-19), at Guam, MI on 4 March 1973. However, you

failed to report and were again listed as UA until you were apprehended by civilian authorities on 10 June 1973.

On 24 July 1973, you requested discharge under other than honorable conditions for the good of the service in lieu of trial by court-martial for the foregoing two periods of UA totalling about 98 days and failure to obey a lawful order. 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 7 August 1973 the discharge authority approved the request and 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. You were discharged under other than honorable conditions on 10 August 1973.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, letters of reference, and the fact that it has been more than 25 years since you were discharged. The Board noted your contentions that your wife was having a difficult pregnancy, was afraid of losing the child, and you wanted to be with her. The Board concluded that these factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP and the fact that you accepted discharge rather than face trial by court-martial for a prolonged period of UA of more than three months. While the Board could understand your desire to be with wife during a difficult period, you provide no persuasive evidence to justify such a prolonged period of UA. Further, the Board noted the aggravating factor that your UA was terminated only by your apprehension. The Board 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. The Board further concluded that you received the benefit of your bargain with the Navy when your request was grant and should not be permitted to change it now. The Board thus concluded that the discharge was proper and 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