



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 8559-98

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 enlisted in the Navy on 7 October 1987 for four years as an FN (E-3). The record reflects that on 30 October 1987 you were dropped from the Nuclear Power Program due to use of marijuana while in the Delayed Entry Program. You served without incident until 4 March 1988 when you received nonjudicial punishment (NJP) for failure to obey a lawful general order. You were also formally counseled for possession of alcohol as a minor. However, on 3 May 1988 you completed MM "A" School and changed your rate to MMFN.

On 7 July 1989, you missed ship's movement and were placed in an unauthorized absence (UA) status until you surrendered on board on 2 August 1989. On 16 August 1989, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. On 21 August 1989, you received your second NJP for the foregoing 26 day period of UA and missing movement. Punishment imposed was a reduction in rate to MMFA (E-2), forfeitures of

\$376 per month for two months, and 45 days of restriction and extra duty.

On the date of your second NJP, you were advised of your procedural rights with regard to administrative separation processing, declined to consult with counsel, and waived your right to an administrative discharge board (ADB). Thereafter, the commanding officer recommended that you be discharged under other than honorable conditions by reason of misconduct due to commission of a serious offense. The Commander, Naval Military Personnel Command approved the recommendation and directed an other than honorable discharge by reason of misconduct. You were so discharged on 14 September 1989.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, good post-service conduct, community service, college degree, letters of reference, your statement in support of your application, and the fact that it has been nearly 10 years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge given the serious nature of the offenses for which you received two NJPs in only 23 months of service. The Board noted the aggravating factor that you waived your right to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your administrative separation was accomplished in compliance with applicable regulations and there is indication of procedural errors which would have jeopardized your rights. The Board concluded that the discharge was proper 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