



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

CRS
Docket No: 1676-01
15 January 2002

[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 9 January 2002. 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 23 April 1990 at age 18. The record reflects that you received three nonjudicial punishments. The offenses included an unauthorized absence of 19 days, absence from your appointed place of duty, failure to obey a lawful order, assault and battery, and drunk and disorderly conduct.

On 26 February 1993 an administrative discharge board recommended that you be separated with a general discharge by reason of misconduct due to a pattern of misconduct. After review by the discharge authority, the recommendation for separation was modified and you received an honorable discharge by reason of misconduct due to commission of a serious offense on 14 April 1993. At that time you were assigned a reenlistment code of RE-4.

An advisory opinion from the Navy Personnel Command dated 25 April 2001 stated that you were not eligible for Montgomery GI Bill benefits since you did not serve for 36 months and were

separated by reason of misconduct. A copy of that opinion is attached.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity. However, the Board concluded that these factors were not sufficient to warrant a change in the reason for discharge, given your three disciplinary actions.

Applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to misconduct. Since that is the reason for your discharge, you have been treated no differently than others in your situation. Therefore, the Board could not find an error or injustice in the assignment of your reenlistment code.

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

Enclosure



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1780
PERS-604
25 Apr 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS ICO
MR. [REDACTED]

Ref: (a) CNPC memo 5420 PERS-00ZCB of 3 Apr 01
(b) Title 38, United States Code, Chapter 30

1. The following is provided in response to reference (a):

a. Per reference (b), members who serve less than 36 months of a three-year or longer enlistment must be discharged for one of the following reasons to be eligible for Montgomery GI Bill (MGIB) Program benefits: Pre-existing medical condition, service connected disability, reduction in force, hardship, certain physical or mental conditions or, for the convenience of the government after serving a minimum of 30 months of active duty.

b. A review of Mr. [REDACTED] service record indicates he entered active duty on 23 April 1990 with a four-year term of enlistment. After serving 35 months of active duty, he was discharged for "Misconduct - Commission of a Serious Offense." We cannot recommend approval of Mr. [REDACTED] request to change his Separation Code or Reentry Code. With the information currently reflected on Mr. [REDACTED] DD Form 214, he is not eligible to receive MGIB Program benefits since he did not serve the required 36 months of active duty.

2. PERS-604's point of contact is MS2 [REDACTED] who can be reached at (DSN) 882-4244 or (C) 901-874-4244.

[REDACTED]
Captain, U.S. Navy
Director, Navy Drug & Alcohol,
Behavioral Health, Federal
Education, & Partnerships
Division (PERS-60)