



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

TJR
Docket No: 2131-01
10 September 2001

[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 6 September 2001. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 6 July 1977 at the age of 18. Your record reflects that on 11 May 1978 you received nonjudicial punishment (NJP) for the theft of government property valued at \$17.85. The punishment imposed was a reduction to paygrade E-1 and a suspended forfeiture totalling \$50.

On 31 August 1978 you began a 256 day period of unauthorized absence (UA) that was not terminated until you were apprehended by civil authorities on 18 March 1979. On 28 June 1979 you received NJP for a three day period of UA and was awarded a \$150 forfeiture of pay.

During the period from 22 July 1979 to 26 August 1980 you were in a UA status on five occasions for a total of 272 days. Your record reflects that you were also apprehended and confined by civil authorities for burglary during this period of UA.

Although there is no documentation in the record, it appears that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing six periods of UA totalling 528 days. Prior to submitting this request, you would have been required to confer with a qualified military lawyer at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. It appears that your request was granted and your commanding officer was directed to issue you an other than honorable discharge for the good of the service. 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. The record clearly shows that on 8 September 1980 you were discharged in accordance with your request for discharge for the good of the service to avoid trial by court-martial.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and your contentions that there was no violence involved in your civil offenses and these offenses were minor and isolated incidents, you did not complete a mental examination even though you had a history of mental illness, you were forced to enlist in the Navy, you did not receive proper counselling regarding your discharge, your discharge was too harsh, you should have received a medical discharge, and your ability to serve was impaired. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your lengthy periods of UA, and your request for discharge to avoid trial for these periods of UA. 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. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. The Board also noted that there is no evidence in the record, and you submitted none, to support your contentions. Even if your absences were due to family and marital problems, those problems would not excuse or mitigate an absence of nearly two years. 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