



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

TJR
Docket No: 3032-01
26 October 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 23 October 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, and applicable statutes, regulations, and policies. The Board was unable to obtain your service record and conducted its review based on the decisional document prepared by the Naval Discharge Review Board.

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 reenlisted in the Navy on 10 January 1983 after three years of prior honorable service. Your record reflects that you continued to serve for a year and ten months without disciplinary infraction but on 7 November 1984 you received nonjudicial punishment (NJP) for absence from your appointed place of duty and dereliction in the performance of your duties, and were awarded a reduction in rate. On 30 November 1984 you received NJP for absence from your appointed place of duty and were awarded extra duty for 45 days. You received your third NJP on 18 December 1984 for absence from your appointed place of duty, missing the movement of your ship, and loss of government property. The punishment imposed was restriction for 45 days, extra duty for 30 days, and a reduction in rate.

Your record further reflects that on 28 February 1985 you were convicted by civil authorities of assault with a deadly weapon,

possession of stolen property, and use of a firearm while committing a felony. You were sentenced to nine months in jail.

Subsequently, on 12 April 1985, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense and civil conviction. At that time you waived your rights to consult with legal counsel and to present your case to an administrative discharge board. On 29 July 1985 your commanding officer recommended an other than honorable discharge by reason of misconduct. On 3 May 1985 the discharge authority approved the foregoing recommendation and directed an other than honorable discharge by reason of misconduct due to conviction by civil authorities, and on 24 May 1985 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service. The Board also considered the State of California court order dated October 7, 1997, which set aside an unspecified civil conviction. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the serious nature of your misconduct which resulted in three NJPs and a conviction by civil authorities. Further, the court action of 1997 clearly was taken as a matter of clemency, and does not mean that you were innocent of the charges of which you were convicted. Given all the circumstances of your case, the Board concluded 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