



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

TRG  
Docket No: 8568-00  
19 July 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the 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 17 July 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 7 July 1968 at age 20. Subsequently, you were an unauthorized absentee from 12 March to 21 August 1970, 11 September 1970 to 27 July 1971 and 4 October 1971 to 27 April 1972. Each of the periods of unauthorized absence was terminated by apprehension. A general court-martial convened on 6 July 1972 and convicted you of the three periods of unauthorized absence totaling about 687 days. The court sentenced you, as mitigated, to forfeiture of all pay and allowances, confinement at hard labor for 10 months and a bad conduct discharge. Subsequently, the Navy Court of Military Review affirmed the proceedings but noted that your absences were caused by your need to care for your sick mother and reduced the period of confinement to seven months. On 29 November 1972 you elected to waive your right to request restoration to duty. The bad conduct discharge was issued on 19 December 1972.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, and your contention that you applied for a hardship discharge due to your mother's illness and your unauthorized absences were caused by the need to care for her. The Board

found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your lengthy periods of unauthorized absence. The Board noted that the original sentence of the court-martial was relatively lenient and it was further reduced on appellate review because of the illness of your mother. The Board concluded that the punishment was not too severe given the offenses you committed.

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



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20350

12 July 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION  
OF NAVAL RECORDS

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

I have reviewed the findings and conclusions of the Board for Correction of Naval Records in the matter of Ex-YN1 [REDACTED] and have determined that additional relief is warranted.

[REDACTED] was discharged at the expiration of his term of enlistment with approximately 19 years and eight months of active duty service. Pursuant to 10 U.S.C. Sec. 1176(a), a regular enlisted member within two years of qualifying for retirement "whose term of enlistment expires and who is denied reenlistment . . . shall be retained on active duty until the member is qualified for retirement . . . unless the member is sooner retired or discharged under any other provision of law." In this case, Mr. [REDACTED] was within this two-year "sanctuary" and, on two occasions, had applied to have his term of enlistment extended in order to qualify for retirement. Both requests were improperly denied and those denials had the same legal effect as if [REDACTED] had applied for and been rejected for reenlistment. Thus, Mr. [REDACTED] was within the protections of 10 U.S.C. Sec. 1176(a).

Had [REDACTED] requests to extend been granted as the law requires, the Navy could have initiated action to separate him for cause during the four-month extension. I agree with the BCNR that Mr. [REDACTED] misconduct warranted such action and that, had action been initiated, an administrative separation board would likely have recommended Mr. [REDACTED] separation prior to his qualifying for a 20 year retirement. However, the Navy chose a different course and it is simply not possible to recreate that scenario at this late date. Consequently, I believe the only adequate remedy is to correct Mr. [REDACTED] records to reflect that his enlistment was extended as requested, that he successfully completed this extended term of enlistment, and that he qualified for retirement with 20 years of active duty service. I further direct the Board to make any additional corrections necessary to fully implement this decision.

Joseph G. Lynch  
Assistant General Counsel  
(Manpower and Reserve Affairs)