



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

TRG
Docket No: 3000-02
28 August 2002

[REDACTED]

[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 26 August 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.

You enlisted in the Naval Reserve on 4 February 1974 at age 17 and reported for two years of active duty on 17 June 1974. You satisfactorily completed initial training and on 27 September 1974 you reported to your first duty station.

A special court-martial convened on 5 March 1975 and convicted you of two periods of unauthorized absence totaling about 71 days. The court sentenced you to reduction to pay grade E-1, forfeiture of \$55 pay per month for two months and confinement at hard labor for two months. You were restored to duty from confinement on 21 March 1975, and the remainder of the punishment was suspended for six months.

On 16 May 1975 you reported to your next duty station. On 22 May 1975 you began a period of unauthorized absence that lasted until you surrendered on 12 February 1976, a period of about 260 days. Your military record shows that on 11 March 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the 260 day period of absence. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were

advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 25 March 1976 and, 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 undesirable discharge was issued on 1 April 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and contention that you have been a good citizen for many years. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for a very lengthy period of absence. 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 when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that 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