



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

CRS
Docket No: 5995-02
26 November 2002

[REDACTED]

[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 19 November 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 1 June 1978. The record reflects that you had numerous unauthorized absences from 29 September 1978 to 28 January 1979, totalling 66 days. Subsequently, on 19 June 1979 you received nonjudicial punishment for an unauthorized absence of a day, failure to obey a lawful order, and violation of a lawful regulation.

Although the request for discharge is not in your record, it appears that you subsequently requested an other than honorable discharge in order to avoid trial by court-martial for an unspecified offense or offenses. The Board presumed that prior to submitting this request, and in accordance with applicable directives, 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. It appears that your request was granted 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 record clearly shows that on 27

July 1979 you received an other than honorable discharge for the good of the service in order to escape trial.

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 recharacterization of your discharge given your request for discharge to avoid trial, the numerous periods of unauthorized absence, and the nonjudicial punishment. 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 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