



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

TJR
Docket No: 8267-02
18 June 2003

[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 17 June 2003. 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.

You enlisted in the Navy on 20 September 1973 at age 17 and served for a year without disciplinary incident. However, on 12 November 1974, you received nonjudicial punishment (NJP) for possession of marijuana and were awarded a \$101 forfeiture of pay.

On 26 June 1975 you received NJP for two periods of absence from your appointed place of duty and were awarded restriction for seven days and a \$100 forfeiture of pay. On 30 July 1975 you were convicted by summary court-martial (SCM) of failure to go to your appointed place of duty, three periods of absence from your appointed place of duty, disobedience, and disrespect. You were sentenced to restriction for 15 days and hard labor without confinement for 30 days.

During the period from 26 to 28 August 1975 you were in an unauthorized absence (UA) status. However, the record does not reflect the disciplinary action taken, if any, for this two day period of UA. Shortly thereafter, on 15 September 1975, you were convicted by special court-martial (SPCM) of two specifications

of failure to obey a lawful order and six periods of failure to go to your appointed place of duty. You were sentenced to confinement at hard labor for 25 days, reduction to paygrade E-1, and a \$300 forfeiture of pay. On 28 October 1975 you received a third NJP for failure to obey a lawful order and a one day period of UA. The punishment imposed was restriction and extra duty for 30 days.

During the period from 5 to 10 December 1975 you were again in a UA status. It appears that you subsequently submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for continued misconduct. Regulations required that prior to submitting this request for discharge, you confer with a qualified military lawyer, be advised of your rights, and be warned of the probable adverse consequences of accepting such a discharge. It appears that your request for discharge was granted because the record clearly shows that on 12 December 1975 you were discharged under other than honorable conditions in lieu of trial by court-martial. 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 Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity. It also considered your contention that you were not given legal representation. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of your repetitive misconduct, which also resulted in your request for discharge. The Board believes that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Further, the Board noted the regulations required for requesting discharge and concluded that these regulations were contrary to your contention of not conferring with a qualified military lawyer. 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