



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

TRG

Docket No: 8509-06  
15 February 2008

[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 12 February 2008. 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 Navy on 27 August 1971 at age 18. You satisfactorily completed initial training and on 3 December 1971 you reported to your first duty station. During the period from 17 January 1972 to 12 June 1974, you received nonjudicial punishment on two occasions and were convicted by a summary court-martial. Your offenses were larceny, conduct to the prejudice of good order and discipline and signing an official record with intent to deceive. Subsequently, you were an unauthorized absentee on two occasions totaling about 535 days.

Subsequently, your mental condition was evaluated and it was determined based on examination and psychological testing that you were neither psychotic nor suffering from any other psychiatric conditions which would render you unable to distinguish between right or wrong, or incapable of adhering to the right. It was further determined that there was no evidence that you suffered from any such condition in the past.

Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the two periods of unauthorized absence totaling about 535 days. Your record also shows that prior to submitting this request, you conferred with a qualified

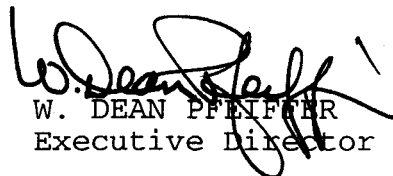
military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 2 February 1976 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged on 4 February 1976.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your youth, low score on the aptitude test and contention that in 1994 you were diagnosed with a brain abscess. You imply that this condition was present when you were on active duty and was the cause of your misconduct. 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 the offenses.** In reaching its decision, the Board was aware that you apparently received a thorough psychiatric evaluation prior to your discharge which concluded that you were responsible for your actions. 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