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

SMW
Docket No: 5586-07
7 February 2008

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 6 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 9 June 1980, you reenlisted in the Navy at age 21 after a prior period of honorable service. On 14 and 15 July 1980, you were in an unauthorized absence (UA) status. On 17 July 1980, you began another UA. On 16 August 1980, you were declared a deserter. On 1 August 1982, you were apprehended by civilian authorities, after being in desertion status for about 745 days. On 20 August 1982, after consulting counsel, you requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for the charges of desertion and UA. On 31 August 1982, the separation authority approved your request for an OTH discharge for the good of the service to avoid trial by court-martial. On 3 September 1982, you were so discharged.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your youth. The Board also considered your contention that you were only charged with UA and that a Federal Bureau of Investigation (FBI) report erroneously shows that you were arrested, charged, and convicted of desertion, and dishonorably discharged. The Board also

considered your contention that you were never in trouble before your desertion. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant changing the characterization of service due to the seriousness of your misconduct. 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. Regarding your contentions, an FBI report of 2 January 2008, a copy of which is enclosed, shows that you were arrested, charged with desertion and discharged to escape trial by court-martial. There is no entry regarding a conviction or dishonorable discharge. Furthermore, regarding your contention of having no other trouble before the offenses for which you were discharged, the record shows that you had four nonjudicial punishments during your first period of service. Finally, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. 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

Enclosure

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