



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

SMW  
Docket No: 7867-07  
15 May 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 14 May 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 30 September 1974, you enlisted in the Navy at age 22. During the period 20 May 1975 to 7 January 1977, you had seven nonjudicial punishments (NJP's) for ten instances of unauthorized absence (UA) totaling about 23 days, being incapacitated for duty, and violating uniform regulations. On 11 January 1977, you were admitted to residential substance abuse treatment for alcoholism. On 18 February 1977, you completed residential treatment and was released to full duty. You were also provided after-care instructions.

On 7 March 1977, you began a UA that ended on 13 April 1977, a period of about 37 days. On 19 April 1977, suspended punishment from the NJP dated 7 January 1977, was vacated. On 30 April 1977, you began another UA. On 3 May 1977, you were apprehended by civilian authorities and held pending charges of public drunkenness. On 5 May 1977, you missed the sailing of your ship. On 18 May 1977, about 18 days later,

your UA ended when you were returned to military authorities. Based on the information currently contained in the record, it appears that you subsequently requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for the two periods of UA that totaled about 55 days and missing the movement of your ship. Apparently, the separation authority approved your request for an OTH discharge. On 1 July 1977, you were separated with an OTH discharge for the good of the service to avoid 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, carefully considered all potential mitigation, such as your youth. The Board also considered your belief that your discharge would be automatically upgraded. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Further, there is no provision in the law or regulations that allows for recharacterization after six months or due to the passage of time. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also 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,



ROBERT D. ZSALMAN  
Acting Executive Director