



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

TJR  
Docket No: 696-08  
1 December 2008

[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 25 November 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.

You enlisted in the Navy on 14 July 1976 at age 22 and served for a year and five months without incident. However, on 2 December 1977 you began a period of unauthorized absence (UA) that was not terminated until you were apprehended by civil authorities on 16 November 1979. During this period of UA you were also declared a deserter.

On 11 January 1980 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA which totalled 721 days. 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. On 6 March 1980 your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 13 March 1980 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as the explanation for your period of UA, and your assertion of hardship and family problems. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your request for discharge to avoid trial by court-martial for your lengthy period of UA. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. 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