



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

SMS
Docket No: 6513-08
19 November 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 18 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.

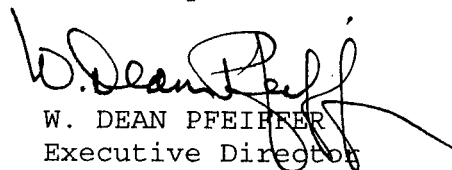
On 13 November 1981, you enlisted in the Navy at age 20 and served without incident until 10 January 1984, when you began a period of unauthorized absence (UA) that ended on 12 January 1984. On 18 January 1984, you began another period of UA. On 8 February 1985, you were apprehended by civilian authorities after being in a UA status for about 387 days. 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 387 day period of UA. At that time, you would have consulted with counsel and acknowledged the consequences of receiving such a discharge. Apparently, the separation authority approved your request for an OTH discharge. On 6 May 1985, 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 desire for a better discharge and post service employment. The Board also considered your contention that alcohol addiction contributed to your misconduct, belief that your OTH discharge would change to a general discharge,

and contention that a DD Form 214 was issued showing that your discharge was upgraded to a general discharge. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct, specifically, more than a year of UA. Regarding your contention, there is no evidence in the record of alcohol abuse. But, even if there were such evidence, that would not excuse your misconduct. Further, the record shows that you signed a DD Form 214 that was issued on 6 May 1985, which indicated that you were discharged with an OTH discharge for the good of the service to avoid trial by court-martial and there is no evidence in the record to show that your OTH discharge was ever upgraded to a general discharge. You are advised that there is no provision in the law or regulations that allows for recharacterization of service due solely 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,


W. DEAN PFEIFFER
Executive Director

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