



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

TRG
Docket No: 8425-08
22 December 2008

[REDACTED]

[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 9 December 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 13 June 1979 at age 17 and reported for recruit training that same day. During the period from 13 August 1979 to 23 February 1982 you were an unauthorized absentee on five occasions totaling about 811 days. After each of the first four periods of unauthorized absence you were counseled, warned of the possible consequences of further misconduct, and allowed to return for completion of recruit training.

On 23 February 1982 you were apprehended by civil authorities to end your last period of unauthorized absence of about 259 days. Although the documentation to support separation processing is not filed in your record, it is clear that you submitted a written request for a discharge under other than honorable (UOTH) conditions in order to avoid trial by court-martial for that last period of absence.

Regulations require that prior to submitting such a request, you must have conferred with a qualified military lawyer, at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that when your request was granted, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

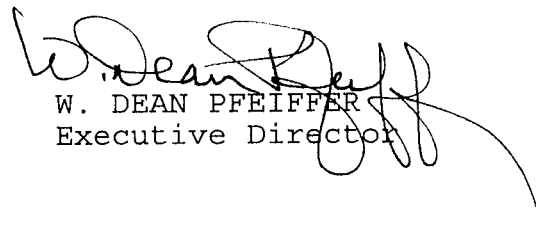
You were separated on 15 April 1982 with a UOTH conditions discharge.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your youth and contention that you were infected with hepatitis while in military confinement and need a recharacterized discharge so that you can receive medical care from the Department of Veterans Affairs. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your extensive record of misconduct and especially your request for discharge to avoid trial for the offenses. There is no documentation in your service record and you have submitted none to support your contention that you were infected with hepatitis while in the Navy. 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 also 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