



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

TAL
Docket No: 3597-09
12 February 2010

[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 21 January 2010. 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.

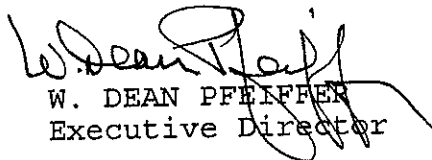
You enlisted in the Navy Reserve and began a period of active duty on 15 March 1972 at age 18. On 25 September 1972, you were convicted at a special court-martial (SPCM) for two instances of unauthorized absence (UA) from your unit lasting for a period of 43 days. At that time you were counseled and warned that further misconduct could result in administrative discharge action. On 15 December 1972, you received NJP for UA from your unit. On 11 April 1973, you were charged with two instances of UA from your unit totaling a period of 78 days and disobeying a lawful order. Based on the information currently contained in your record it appears that you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for the above listed charges of UA and disobeying a lawful order. You would have conferred with a qualified military lawyer, advised of your rights and warned of the probable adverse consequences of accepting such a discharge. In connection with this processing the separation authority would have approved a recommendation from your commanding officer and directed an other than honorable discharge for the good of the service. The record clearly shows on 13 June 1973 you were so discharged. 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 application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given seriousness of your misconduct, periods of UA totaling over four months and request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for discharge 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 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