



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

REC
Docket No: 02529-10
27 December 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 15 December 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 and began a period of active duty on 26 April 1971, at age 17. You commenced a period of unauthorized absence (UA) for ten days. Your chain of command decided to not impose punishment. On 14 December 1972, you were convicted by a special court-martial of being UA for 147 days. You were sentenced to a forfeiture of \$600, and confinement at hard labor for 100 days. On 14 December 1972, you escaped custody and remained UA until 26 February 1975. On 27 February 1975, you received nonjudicial punishment (NJP) for escaping custody. You submitted a request for a good of the service discharge to avoid trial by court-martial for the period of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your commanding officer forwarded his recommendation that you be discharged under other than honorable (OTH) conditions by reason of good of the service to avoid trial by court-martial. Your request for discharge was granted and on 27 February 1975, you received an OTH discharge for the good of the service in lieu of 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 application, carefully weighed all potentially mitigating factors, such as your youth, conduct, and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant changing your characterization of your discharge, given your record of one NJP, conviction by one SPCM for misconduct, and request for discharge. The record shows that you requested an OTH discharge for the good of the service to avoid trial by court-martial after you consulted qualified counsel and acknowledge the consequences of receiving such a discharge, and there is no evidence in the record to show that you were eligible for consideration to be discharged due to a reduction in force. Further, 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