



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

SJN
Docket No: 12213-10
31 August 2011

[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 30 August 2011. 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 21 September 1987. The Board found that based on the information currently contained in your record, on 25 April 1989, you were convicted by civil authorities of being an accessory to a felony, fighting, disturbing the peace, using offensive language, and assault. On 14 June 1989, you were sentenced to one year in jail, probation, and fines. On 15 December 1989, you were released from jail on your own recognizance. However, you failed to report back to military authorities, and began a period of unauthorized absence (UA) that lasted 234 days, ending on 5 February 1990. Although your record is incomplete, it appears that you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial for 234 days of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and, on 29 March 1990, you received an OTH

discharge 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 and record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your misconduct that resulted in a civil conviction for serious offense, charges being preferred to a court-martial for a period of UA lasting over seven months, and request for discharge. 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