



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

SJN  
Docket No: 05822-11  
22 March 2012

[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 20 March 2012. 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 16 October 1978. The Board found that you received three nonjudicial punishments (NJP's) for two periods of unauthorized absence (UA) and two instances of disrespect. On 14 May 1979, you began a period of UA and were declared a deserter on 15 June 1979. On 9 August 1980, you were apprehended by civil authorities and found guilty of theft by unlawfully taking and receiving stolen property. You were sentenced to eight to 23 months in jail. On 3 March 1981, 649 days later, your UA period ended. On 30 April 1981, it was directed that you be separated from the naval service with an other than honorable (OTH) discharge in lieu of court-martial. You conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 1 May 1981, your UA period was charged as nonperformance of duty due to your imprisonment. On 11 May 1981, you received the 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, record of service, and desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your misconduct that resulted in three NJP's and civil conviction of serious offenses. The Board believed that considerable clemency was extended to you when your commanding officer directed your OTH discharge in lieu of court-martial. The Board also concluded that you received the benefit of your bargain with the Navy 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