



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 1747-98

30 August 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 4 August 1999. 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.

The Board found that you enlisted in the Navy on 3 July 1990 at age 17. Your record reflects that on 22 August 1991 you received nonjudicial punishment for stealing from a vending machine, absence from your appointed place of duty, and failure to obey a lawful order on two occasions.

On 8 October 1991 an administrative discharge recommended that you be separated with a general discharge by reason of misconduct due to commission of a serious offense. However, the recommendation was held in abeyance due to a pending special court-martial.

Your military record shows that on 1 January 1992 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for larceny on seven occasions and receiving stolen property on seven occasions. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of

accepting such a discharge. The Board found that your request was granted and, 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. You received an other than honorable discharge on 28 February 1992. At that time you were assigned an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity. However, the Board found that these factors were not sufficient to warrant recharacterization of your discharge, given the seriousness and frequency of the offenses. 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 should not be permitted to change it now. Based on the foregoing, the Board concluded that no change to the discharge is warranted.

The Board noted that regulations require the assignment of an RE-4 reenlistment code when an individual is discharged in lieu of trial by court-martial. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of your reenlistment code.

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