



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

ELP
Docket No. 7387-99
28 February 2000



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 24 February 2000. 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 28 February 1972 for three years at age 17. The record reflects that you were advanced to CSSA (E-2) and served without incident until 11 April 1973 when you received nonjudicial punishment (NJP) for a three day period of unauthorized absence (UA). Punishment imposed was an oral admonition, a forfeiture of \$30, and eight days of restriction and extra duty. On 15 April 1973 you broke restriction and were reported UA. However, the following day you were admitted to an Army hospital in a disciplinary status for treatment as a result of an automobile accident.

The record further reflects in May 1973 you began a series of five UAs from 14 May to 2 July, 16-18 July, 24-25 July, 2 August-22 August, and 17 September to 14 October 1973. During the foregoing period, congressional correspondence and a number of other letters allude to financial and family problems and a

request for a hardship discharge. However, the record contains no evidence that you submitted a request for a hardship discharge.

The record indicates that on 6 December 1973 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the five foregoing periods of UA totalling about 99 days. Although your letter requesting discharge is missing from the record, the discharge authority refers to it in his letter of 21 December 1973 which approved your request. On 3 January 1974 you received a second NJP for two brief periods of UA totalling about one day. You received an undesirable discharge on 14 January 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, letters of reference, good post-service conduct, and the fact that it has been more than 26 years since you were discharged. The Board noted your contention to the effect that people who deserted to Canada were pardoned and had their discharges upgraded. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you accepted discharge rather than face trial by court-martial for five periods of UA totalling more than three months. Your contention that individuals who deserted to Canada received pardons is partially true. Deserters were granted amnesty to allow them to return to the United States without fear of prosecution. However, these individuals did not receive discharges under honorable conditions, but rather undesirable discharges. 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 with the Navy when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that the discharge was proper and no change is warranted. 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