



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

TJR
Docket No: 4945-01
27 December 2001

[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 19 December 2001. 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.

The Board found you enlisted in the Navy on 19 November 1977 at the age of 17.

Your record reflects that during the period from 18 September 1978 to 16 July 1981 you were in an unauthorized absence (UA) status on three occasions. Subsequently, it appears that you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing three periods of UA totalling 949 days. Prior to submitting this request, you would have conferred with a qualified military lawyer and been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Presumably your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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 record clearly reflects that on 3 September 1981 you were issued an other than honorable discharge for the good of the service to escape trial by court-martial.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and your contention that you thought your discharge would be automatically upgraded. However, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent and lengthy periods of UA, and your request for discharge to avoid trial for these 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 with the Navy when your request for discharge was granted and you should not be permitted to change it now. Additionally, no discharge is automatically upgraded due to the passage of time. 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