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

TRG
Docket No: 94-99
6 January 2000

[redacted]

Dear [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 4 January 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 24 August 1977 at age 17. The record shows that you then served without incident until 7 November 1980. On that date you received nonjudicial punishment for an unauthorized absence of about eight hours. On 29 August 1981 you were apprehended by civil authorities on a charge of armed robbery. On 25 January 1982 you were returned to military jurisdiction after being held by civil authorities for about 147 days. On 28 July 1982 you were convicted by civil authorities of armed robbery and sentenced to five years of probation, 120 hours of community service, and to write a letter of apology to the victim.

The documentation to support the discharge processing is not in your record. However, the Board assumed that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the 147 day period of unauthorized absence which was caused by your incarceration by civil authorities. Regulations required that prior to submitting such a request, you confer with a qualified military lawyer and be advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that when your request was granted, 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 shows that the other than honorable discharge was issued on 19 August 1982 by reason of good of the service to escape trial.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, period of good service and your contentions that you were inadequately represented by counsel during the discharge processing. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your conviction by civil authorities of a serious offense, a 147 day period of unauthorized absence, and especially your request for discharge to avoid trial for the offense. There is no evidence in the record, and you have submitted none, to show that you were inadequately represented by counsel. However, 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 found that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued 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