DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 4847-00
6 November 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 31 October 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 22 April 1985 at age 22. Subsequently, the Defense Investigative Service found that you had an extensive record of civilian misconduct. This included assault with a deadly weapon with intent to do great bodily injury with the weapon being a motor vehicle, drunk driving and several other alcohol offenses, several instances of driving on a suspended license, multiple instances of failure to appear on arrest warrant, speeding, and numerous vehicle safety infractions.

While the DIS investigation was being conducted, you completed Electronics Mate (Class A) school and were advanced to EM3 (E-4). On 24 November 1985 you reported to the Navy Nuclear Power School. On 2 September 1986 you were notified of separation processing due to fraudulent enlistment. The record shows that you objected to discharge. On 12 September 1996 your commanding officer recommended a general discharge stating, in part, as follows:

"... (His) present performance does not meet the qualities of one who understands the meaning of responsibility which is required of a nuclear operator."

On 28 September 1986 the discharge authority directed a general discharge. You were so discharged on 15 October 1986. At that time you were not recommended for reenlistment and were assigned an RE-4 reenlistment code.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your completion of almost 18 months of active duty without any disciplinary infractions and your desire to again serve in the military following completion of your college degree. The Board found that these factors were not sufficient to warrant recharacterization of your general discharge given your extensive involvement with civil authorities which you did not disclose at the time of your enlistment. The Board concluded that the discharge was proper as issued and no change is warranted.

Regulations require the assignment of an RE-4 reenlistment code when an individual is discharged due to a fraudulent enlistment. Since you have been treated no differently than others discharged for that reason, the Board could not find an error or injustice in the assignment of the RE-4 reenlistment code.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

Your letters of 23 and 26 October 2000 were received after your case was considered by the Board. Those letters show that you have been granted a waiver to enlist in the National Guard and your civilian record for 1985 has been expunged by a California Court. You should be aware that the action of a state court is not binding on the Federal Government and your naval record will continue to show an extensive record of civilian misconduct. Therefore, no further action will be taken on this matter at this time.

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