



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

ELP
Docket No. 1042-01
22 March 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 for the Board for Correction of Navy Records, sitting in executive session, considered your application on 21 March 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 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 April 1978 for four years at age 22. At the time of your enlistment, you had completed nearly four years of prior active service in the Air Force. The record reflects that you were advanced to EW3 (E-4) on 9 January 1979.

The medical record reflects that during the months of December 1979 and January 1980 you were seen at sick call for motion sickness. On 15 January 1980 you were referred to a ENT clinic for an evaluation of your chronic seasickness. However, the results of that evaluation are not on file in the medical record.

You served without incident until 9 April 1980 when you were reported in an unauthorized absence (UA) status. You remained absent until you were apprehended by civil authorities on 20 January 1981. Charges for the foregoing period of UA were referred to a special court-martial on 24 April 1981.

On 1 June 1981 you received nonjudicial punishment (NJP) for a one day period of UA. Punishment imposed was a reduction in rate to EWSN (E-3).

On 5 June 1981 you submitted a request for discharge under other than honorable conditions for the good of the service to escape trial by court-martial for the foregoing 286 day period of UA. In a separate statement, you claimed that your UA was due to marital problems caused by being at sea and being unable to work in your rating due to seasickness. 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. On 25 June 1981 the discharge authority directed discharge under other than honorable conditions. You were so discharged on 8 July 1981.

On 27 January 1983, the Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable Air Force service, college degree, letters of reference, performance appraisals, and the numerous certificates of achievement and commendation attesting to your achievements as an Army employee. The Board noted the issues you presented to the NDRB in January 1983 and your current contentions that the only reason you went UA was constant seasickness due to an ear problem. You assert that you should have been discharged for medical reasons. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP and the fact you accepted discharge rather than face trial by court-martial for more than nine months of UA. The Board noted the aggravating factor that this prolonged period of UA was terminated only by your apprehension. Your chronic seasickness and marital problems may be mitigating factors, but you provide no evidence of any circumstances which would have justified such a prolonged period of UA or prevented you from returning to military jurisdiction prior to being apprehended. 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 thus concluded your 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