

Reply to:

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Gary R. Myers  
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District of Columbia

7 Jul 04

MEMORANDUM FOR: John F. Kilcooley  
68-06 Cloverdale Blvd  
Bayside, NY 11364

SUBJECT: BCNR 718 423-5317

1. Please call me after you read this. I, like you, had hoped for a better result.

Regards,  
*GARY M*  
Gary Myers

Enclosure

ATTN: MARR



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

CRS:jdh  
Docket No: 9746-03  
22 June 2004

MR GARY R MYERS  
ATTORNEY AT LAW  
78 CLARK MILL ROAD  
WEARE NH 03281

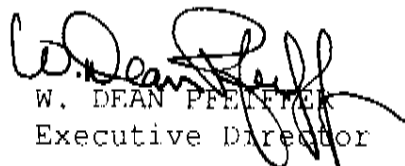
Dear Mr. Myers:

This is in reference to your interest, as counsel, in the case of Mr. John F. Kilcooley.

Enclosed is a letter addressed to Mr. Kilcooley, informing him that his application has been denied. It is requested that you transmit the denial letter to him, a copy of which is enclosed for your records.

It is regretted that a more favorable reply cannot be made.

Sincerely,

  
W. DEAN PFEIFFER  
Executive Director

Enclosures



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

CRS  
Docket No: 9746-03  
21 June 2004

MR JOHN F KILCOOLEY  
68-06 CLOVERDALE BLVD  
BAYSIDE NY 11364

Dear Mr. Kilcooley:

This is in reference to your application for reconsideration 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 16 June 2004. 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 21 October 1954 at age 17 for the duration of your minority. The record reflects that during the period 30 August 1955 to 12 February 1958, you received four nonjudicial punishments and were convicted by a special court-martial. The offenses included unauthorized absences totalling 22 days, missing movement, and breaking restriction.

On 27 February 1958 your commanding officer recommended that you be separated with an undesirable discharge by reason of unfitness. After review by the discharge authority on 31 March 1958, the recommendation for separation was approved but you were placed on probation until the end of your enlistment. Subsequently, on 27 June and 12 July 1958, you received two more nonjudicial punishments for unauthorized absences totalling about two days. On 17 October 1958 you received a seventh nonjudicial punishment for refusing to obey the order of a commissioned officer.

On 19 October 1958 the commanding officer again recommended that you be separated with an undesirable discharge by reason of unfitness. You responded on 18 November 1958 by requesting discharge under honorable conditions. After review by the discharge authority, the recommendation for separation was approved and on 5 December 1958 you received an undesirable discharge.

Subsequently, requests for recharacterization of your discharge were denied by the Naval Discharge Review Board in 1962 and 1980, and by this Board in 1989. Requests that this Board reconsider your case were denied in 2002 and 2003.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity; the fact that you had nearly completed your active duty obligation when you were administratively discharged; and all the documentation you submitted with your most recent request for reconsideration, especially your exemplary post-service adjustment and service as an emergency medical technician. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge, given your record of frequent involvement with military authorities. In this regard, the Board noted that you were the subject of eight disciplinary actions during a period of about four years. Further, you were given a second chance in March 1958 when the discharge was suspended and you were placed on probation. However, you failed to take advantage of this opportunity and continued to commit offenses.


The Board also considered your contention that the 17 October 1958 nonjudicial punishment was improper, but concluded that there is insufficient evidence in the record to show that the order you received and disobeyed was illegal. In this regard, the Board noted that the events at issue and the nonjudicial punishment occurred more than 50 years ago, and the supporting documentation has long since been destroyed. Therefore, the Board cannot confirm your version of the events that led to this disciplinary action. Further, the statement from your shipmate does not conclusively link the incident he discusses with the one for which you received nonjudicial punishment. Finally, you have submitted nothing to document your contention that the order you received was illegal, such as a regulation requiring line handlers when individuals were over the side.

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 PFEFFER  
Executive Director