



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

TJR
Docket No: 7460-98
16 April 1999

[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 13 April 1999. 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 Marine Corps on 18 April 1972 at the age of 17. Your record shows that on 7 November 1972 you received nonjudicial punishment (NJP) for a four day period of unauthorized absence (UA). The punishment imposed was restriction for 14 days and forfeitures totalling \$25. The restriction was suspended for 30 days.

On 17 January and again on 9 February 1973 you received NJP for two incidents of UA totalling four days. On 1 August 1973 you were convicted by special court-martial (SPCM) of two incidents of UA totalling 52 days. You were sentenced to confinement at hard labor for a month and forfeitures totalling \$100.

Your record also reflects that on 29 May 1974 you were convicted by SPCM of three incidents of UA totalling nine days. You were sentenced to confinement at hard labor for two months, reduction to paygrade E-1, forfeitures totalling \$400, and a bad conduct discharge (BCD). On 9 August 1974 you received NJP for failure to obey a lawful order. The punishment imposed was restriction for 14 days and forfeitures totalling \$84, all of which was

suspended for 60 days. On 21 August 1974 the BCD was suspended for six months.

Your record further reflects that on 6 May 1975 you received your fifth NJP for assault. The punishment imposed was forfeitures totalling \$70 and restriction and extra duty for 14 days. Part of the punishment was suspended.

On 30 July 1975 you began a 22 day period of UA that was not terminated until 21 August 1975. On 5 September 1975 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA, disrespect, disobedience, and breaking restriction. Your record shows that 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 16 September 1975 your request was granted and your commanding officer was directed to issue you an undesirable 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. On 25 September 1975 you were issued an other than honorable discharged.

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 would like your discharge upgraded. The Board further considered your contention that you were originally to receive a general discharge and were told to sign for the undesirable discharge because it would be upgraded at a later time. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct which resulted in five NJPs and two court-martial convictions, and especially your request for discharge to avoid trial for committing more offenses after the BCD had been suspended. The Board believed that a considerable amount of 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 Marine Corps when your request for discharge was granted and should not be permitted to change it now. Further, there is no evidence in the record, and you have submitted none, to support your contention that you were to receive a general discharge. Given all the circumstances of your case the Board concluded 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