



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 186-99

22 July 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 21 July 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 3 August 1954 for three years at age 18. At the time of your enlistment, you had completed more than 19 months of service in the Naval Reserve.

The record reflects that you were advanced to PFC (E-2) and served for 25 months without incident. However, during the three month period from September to December 1956 you received two nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of two periods of unauthorized absence totalling 19 days, disobedience, and failure to obey a lawful order.

On 13 February 1957, you were convicted by special court-martial of desertion from 28 December 1956 to 1 February 1957. You were sentenced to confinement at hard labor for six months, forfeitures of \$44 per month for six months, and a bad conduct discharge. The convening authority approved the findings and sentence but reduced the confinement and forfeiture to three months. On 25 March 1957 you waived your right to restoration to duty and requested execution of the bad conduct discharge. Thereafter, the Navy Board of Review approved only a finding that found you guilty of unauthorized absence from 28 December 1956 to 1 February 1957. However, the sentence was affirmed. Clemency was denied and you received the bad conduct discharge on 13 May 1957.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, regret for your actions, Naval Reserve service, and the fact it has been more than 42 years since you were discharged. The Board noted your contentions that it is unjust for you to continue to suffer the adverse effects of the bad conduct discharge, you would not receive the same type of discharge under current standards, the punitive discharge was unfair since you were so close to finishing your enlistment, and personal problems and being newly married caused you to make bad decisions. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the convictions by a summary court-martial and special court-martial. The Board noted the aggravating factor that you waived your right to restoration to duty, the one opportunity you had to earn a discharge under honorable conditions. The Board was not persuaded that under current standards that you would not receive a bad conduct discharge with your record. The fact that you had nearly completed your enlistment is without merit since you would have had to serve more than three months beyond the expiration of your enlistment to make up for lost time due to unauthorized absence and military confinement. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. 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