



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

ELP  
Docket No. 327-01  
23 April 2001

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 18 April 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 Marine Corps on 15 September 1972 for four years at age 17. The record reflects that you were advanced to PFC (E-2) and served only five months without incident. However, during the seven month period from March 1973 to October 1973 you received four nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of three instances of absence from your appointed place of duty, possession of eight grams of marijuana, three instances of failure to obey a lawful order or regulation, failure to walk your post in a military manner, leaving your post without being relieved, and disrespect. During this period you were convicted by civil authorities of possession of marijuana and fined \$90.

On 7 February 1974 you were convicted by special court-martial of a 57-day period of unauthorized absence (UA) from 5 November 1973 to 2 January 1974, failure to stand inspection, and escaping from lawful custody. You were sentenced to confinement at hard labor for three months, forfeitures of \$100 per month for three months, and a bad conduct discharge (BCD).

On 20 June 1974 you were convicted by a second special court-martial of two specifications of disobeying a lawful order and being disrespectful in language towards a SGT (E-5). You were sentenced to confinement at hard labor for 105 days, forfeitures of \$200 per month for two months, and a BCD. On 27 September 1974 you waived your right to request restoration to duty and requested that the BCD be executed. You stated that the Marine Corps had established a prejudicial attitude toward you. Additionally, you asserted that you had a grudge against the Marine Corps because you were denied the right to see your grandmother when she was in need, and you felt it would be better if your service was terminated before you got killed or before you killed someone.

On 20 September 1974 you received NJP for disrespect towards an officer and a staff noncommissioned officer, and three instances of disobeying a lawful order. You were placed on appellate leave on 11 October 1974. However, on 22 October 1974 you were charged by civil authorities with manslaughter and your appellate leave was cancelled.

The Navy Court of Military review affirmed the findings and the sentence of the 4 February 1974 special court-martial on 14 November 1974. The second special court-martial was affirmed by the Navy Court of Military Review on 14 February 1975 and you received the BCD on 28 May 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been nearly 26 years since your were discharged. The Board noted your contention that the Executive Order issued by President Carter was not applied in your case. The Board could not determine if you were referring the Ford Clemency Program that established a Presidential Clemency Board (PCB) to hear appeals of veterans who went UA or were discharged between August 1964 and March 1973 with an undesirable, BCD or dishonorable discharges or the unconditional pardoning that led to the establishment of the Special Discharge Review Program (SDRP) in January 1977 by the Carter Administration. Had you applied, it appears that you would not have met the criteria for either program. Further, these programs met with adverse congressional reaction which resulted

in the enactment of legislation which prohibited granting of veterans' benefits for any individual whose discharges were upgraded under these programs unless they were further reviewed by a Discharge Review Board under uniform standards which were historically consistent with the criteria for determining honorable service.

The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of five NJPs and convictions by a summary and two special courts-martial. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. The Board obtained a Federal Bureau of Investigation report that shows your post-service conduct has been marred by convictions for aggravated assault, possession of narcotics, violation of the Uniform Firearms Act, drunk driving, disorderly conduct, retail theft, and possession of a firearm as a convicted felon. The current conviction for which you are presently incarcerated was not shown in the report. The Board concluded that the 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