



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

ELP
Docket No. 360-01
19 November 2001

[REDACTED]

[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 Navy Records, sitting in executive session, considered your application on 15 November 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. In Addition, the Board considered the advisory opinion furnished by the Specialty Advisor of Psychiatry from the Behavioral Health Clinic, National Naval Medical Center, Bethesda, MD, dated 10 August 2001, a copy of which is enclosed.

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 10 July 1974 for three years at age 17. The record reflects that you served for seven months without incident. However, during the three month period from February to May 1975, you received three nonjudicial punishments (NJP) for a three day period of unauthorized absence (UA), disobedience of a lawful order, and sleeping on post.

The medical record reflects that on 8 August 1975 you were brought to sickbay. You were extremely nervous, had no motor-sensory coordination or eye movement to reflexes. You refused to answer the examining doctor's questions and were admitted to the

ward. At that time, the doctor believed you were in an acute state of anxiety or some sort of hysteria, as opposed to a form of catatonic schizophrenia. You were placed on medication.

On 14 August 1975 you were released from the ward after being on thorazine for two days. You acted appropriately when first awakened but once oriented to your environment you would slip back into a withdrawn state. You were taken off the medication and returned to your unit. However, once in your unit you were unable to adjust and became withdrawn once again. At that point, you requested to be placed in custody for safekeeping, where you began to act appropriately and communicated freely. The examining doctor's impression was that you had an inadequate personality disorder and were not psychotic. There is no evidence in available medical records that you were referred for psychiatric evaluation.

During the months of September and October you received two NJPs for a 20 day period of UA and sleeping on post. However, no disciplinary action is shown in the record for a 13 day period of UA from 23 September to 6 October 1975. Thereafter, you were formally counseled regarding your substandard performance of duty and frequent involvement with military authorities. You were warned that if you did not take corrective action you could be recommended for administrative separation.

On 23 October 1975 you were reported UA again, and you were arrested by civil authorities on 7 November 1975 for breaking and entering. On 24 November 1975 you pled guilty to three counts of breaking and entering and were sentenced to two years in the county jail. On 24 March 1976 you pled guilty to the offense of escape and were sentenced to six months in jail.

On 18 May 1976 you were notified that you were being processed for discharge under other than honorable conditions by reason of misconduct due to conviction by civil authorities. You were advised of your procedural rights and waived those rights. Thereafter, the commanding officer recommended an undesirable discharge by reason of misconduct due to civil conviction. The discharge authority approved the recommendation and directed an undesirable discharge. You were so discharged on 24 June 1976.

On 26 August 1980 the Naval Discharge Review Board (NDRB) denied your request for recharacterization of your discharge. That board considered arguments by counsel that you were legally "insane" and not responsible for your actions at the time of the offenses which culminated in your discharge. In support of that argument counsel submitted psychiatric evaluations conducted in July 1977, February, April, and September 1978. These evaluations show that you were committed by a court to a state

hospital on 30 August 1977 because you were considered incompetent to stand trial on charges of robbery at gunpoint, unlawful possession of a firearm, and possession of marijuana. While hospitalized, you received diagnoses that ranged from psychotic organic brain syndrome due to drug or poison intoxication and anti-social personality, to paranoid schizophrenia. On 26 September 1978 you were deemed fully competent to return to the court for disposition of the pending charges.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, the issues you presented to the NDRB, and the fact that it has been more than 21 years since you were discharged. The Board noted your contentions to the effect that as a result of a nervous breakdown you were left without any sense of right and wrong, the medications did not prevent you from violent actions, and that you have collected Social Security disability for the past 10 years. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four NJPs and the serious nature of the charges of which you were convicted by civil authorities. The Board substantially concurred with comments contained in the attached advisory opinion. Your contention of a nervous breakdown is not supported by the evidence of record. Neither available records nor any evidence submitted with your application indicates that at the time of the offenses which led to your discharge, you were unable to distinguish right from wrong or were not responsible for your actions due to a psychosis. The fact that you receive Social Security disability does not provide a valid basis for recharacterizing your discharge. The Board noted that after your discharge, you committed additional offenses for which you were held accountable by civil authorities after a period of treatment. A Federal Bureau of Investigation (FBI) report obtained by the Board shows that you have been convicted of robbery with a weapon, possession of a controlled substance and theft. The Board also noted the aggravating factor that the psychiatric evaluations conducted after your discharge indicate that drug abuse was a contributing factor in your mental problems. Drug abuse does excuse misconduct. The Board concluded that 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

Enclosure