



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

ELP
Docket No. 508-01
29 November 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 of the Board for Correction of Navy Records, sitting in executive session, considered your application on 28 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.

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 reenlisted in the Marine Corps on 15 November 1958 for six years as a CPL (E-4). At the time of your reenlistment, you had completed more than two years of prior active service. Your medical record indicates that in September 1958 you contracted infectious hepatitis while in Lebanon. You were returned to the United States and hospitalized from 5-24 October 1958. The medical record does not reflect any recurrence of this disease.

You served without incident until 13 December 1961 when you were convicted by summary court-martial of failure to obey a lawful order to turn in your liberty card. You were sentenced to one month of restriction.

On 14 March 1962, you were convicted by general court-martial of failure to obey a lawful general order by having more than one liberty card; three specifications of selling government property (225 bed sheets valued at \$369.25); three specifications of

larceny (the 225 bed sheets); two specifications of breaking restriction; and possession of a liberty card belonging to another Marine. You were sentenced to confinement at hard labor for 18 months, forfeitures of \$50 per month for 18 months, reduction in rank to PVT (E-1), and a bad conduct discharge. On 28 March 1962 the convening authority reduced the hard labor and forfeitures to eight months. The Navy Board of Review affirmed the findings and the sentence on 26 April 1962 and the Court of Military Appeals denied a petition for review on 11 July 1962. Thereafter, you requested suspension of the punitive discharge and restoration to duty. However, the Navy Disciplinary Command did not recommend clemency or restoration to duty given the seriousness of the offenses of which you were convicted and your attitude toward authority. Accordingly, clemency and restoration to duty were denied and you received the bad conduct discharge on 27 September 1962.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, prior honorable service, letters of reference, and the fact that it has been 40 years since you were discharged. The Board noted your contentions to the effect that the military owed you something because you contracted hepatitis, you pled guilty in accordance with a pre-trial agreement on the advice of counsel, the sentence was too harsh, and you have paid your debt to society. The Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review of determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, your claim that counsel gave you bad advice to plead guilty cannot be considered by the Board because that is the purpose of an appeal. Available records contained no evidence of a pre-trial agreement. However, it appeared to the Board that the convening authority gave you due consideration when he reduced the confinement and forfeitures from 18 months to eight months. The Board concluded that there was no connection between the hepatitis and the offenses which resulted in your conviction and discharge. Additionally, since you contracted hepatitis on your first enlistment, it appears to the Board that you are eligible for medical benefits from the Department of Veterans Affairs. However, you should contact that agency for any determination on your entitlement to benefits. The Board also concluded that the sentence of the general court-martial was not overly harsh, given the offenses of which you were convicted. Your conviction and discharge were effected in accordance with applicable law and regulations and the discharge appropriately characterizes your second period of service. The Board thus concluded that the discharge was proper and no clemency 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