



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1605-99

16 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 June 2000. 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 for four years on 27 January 1965 at age 18. The record shows that you served in Vietnam from 6 May 1966 to 25 November 1966 and were awarded the Combat Action Ribbon. On 26 January 1968 you were awarded the Good Conduct Medal.

The record shows that during 1968 you received nonjudicial punishment on three occasions and were convicted by a special court-martial. Your offenses were two periods of unauthorized absence totaling about 28 hours, absence from your appointed place of duty, leaving your post without being properly relieved, wrongful appropriation of a government vehicle and a uniform offense. Your four year enlistment would have expired on 26 January 1969, however, a two year extension became effective on 27 January 1969.

On 3 February 1969 you began a period of unauthorized absence which lasted until 25 March 1971. Your military record shows

that on 14 April 1971 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing 782 day period of unauthorized absence. Your record also 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. The Board found that your request was granted and, 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. You were discharged on 30 April 1971.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your initial period of good service, combat service in Vietnam and your desire for veterans benefits. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your lengthy period of unauthorized absence and especially your request for discharge to avoid trial for that offense. The Board believed that considerable 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 when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that 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.

The Board believes that you may be eligible for veterans benefits based on your completion of your initial four year enlistment. Therefore, if you have been denied benefits you should appeal that denial under procedures established by the Department of Veterans Affairs.

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