



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

ELP
Docket No. 3093-01
15 October 2001

[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 Navy Records, sitting in executive session, considered your application on 11 October 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 records provided for the Board's review were incomplete. However, the Board found you enlisted in the Marine Corps on 17 September 1996 for four years at age 19. The record reflects that you were advanced to CPL and served without incident until 19 August 1999, when charges were preferred against you for disrespect to an officer, assaulting an officer, and three specifications of assault on two corporals. The charges were referred to a special court-martial on 23 August 1999.

On 24 September 1999 you entered into an agreement to plead guilty to two specifications of assault by striking a CPL on the face with your fist, pushing him up against a wall, grabbing his throat with your hands and arm; and throwing the CPL from the second story deck. In return for your guilty pleas, the convening authority agreed to withdraw the remaining charges and

specifications. The maximum sentence limitations to this agreement are not on file in the record nor were they provided by you.

On 18 October 1999 you were convicted by special court-martial of the two specifications of assault. You were sentenced to confinement at hard labor for six months, forfeitures of \$639 per month for 6 months, reduction in rank to PVT (E-1) and to be reprimanded. The convening authority approved the sentence, but suspended all confinement in excess of 90 days for a period 12 months.

You provide a copy of a career planning contact record which shows that on 7 August 2000 you were interviewed by the career planner and counseled regarding the Transition Assistance Program and the Marine Corps Reserve. The form noted that no reenlistment request had been submitted, and an honorable discharge and RE-1A reenlistment code were recommended. On 29 August 2000, the company commanding officer noted on the form that you were recommended for reenlistment but changed the recommended reenlistment code from RE-1A to RE-3C. You also provide copies of two request mast applications you submitted in December 1999 and November 2000. Your first request dealt with personal matters you could not deal with while in the brig. The second request asked for a hearing with the battalion commander concerning disrespectful treatment you received from a first sergeant and to get answers to a number of questions about your getting an honorable discharge. The request mast form does not indicate whether or not a hearing was granted. You further provide letters from the battery commanding officer, executive officer, and fire direction officer to the effect that even though your conduct marks were insufficient to warrant a fully honorable discharge, your overall service was honorable and such a characterization of service is warranted. However, on 29 November 2000, you were released from active duty under honorable conditions, transferred to the Marine Corps Reserve, and assigned an RE-4 reenlistment code.

Character of service is based, in part, on conduct and proficiency marks which are computed from marks assigned during periodic evaluations. What marks, if any, assigned upon separation are not shown in the record. Your final conduct and proficiency averages were 3.76 and 3.8, respectfully. A minimum average mark of 4.0 in conduct was required for a fully honorable characterization of service at the time of your release from active duty.

Regulations provide that an RE-3C reenlistment code is assigned when directed by Commandant of the Marine Corps or when the disqualifying factor is not covered by any other code. An RE-4

reenlistment code means an individual is not recommended for reenlistment.

In its review of your application the Board conducted a careful search of available records for any mitigating factors which might warrant a recharacterization of your general discharge and a change in your reenlistment code. However, no justification for such changes could be found. The Board noted your contentions to the effect that your record of service is missing two sets of marks in conduct and proficiency, and that these missing marks prevented you from receiving an honorable discharge; you were recommended for an RE-1A code, but it was later changed to RE-3C by the commanding officer, and for some unknown reason was further changed; and that the individual you assaulted was discharged under other than honorable conditions for drugs. You claim your defense counsel continually told you that you would get an honorable discharge and you believed that was true until 15 days before your release when you were notified that you would not receive such a characterization.

The Board concluded that the foregoing contentions and claims were insufficient to warrant recharacterization of your discharge given the serious nature of the offenses of which you were convicted by special court-martial. The fact that the individual you assaulted received an other than honorable discharge for drugs neither mitigates nor excuses your misconduct. The Board believed that you were fortunate that the command allowed you to complete your enlistment since you could have been processed for separation under other than honorable conditions by reason of misconduct due to commission of a serious offense. The Board has no way of determining why you were not assigned marks for two periods ending 31 July 1998 and November 1998. Both periods show an "N/A" was entered for the conduct and proficiency marks, indicating that marks were not required. The Board also noted that only if you had received two perfect marks of 5.0 in conduct, or a mark of 5.0 and another of 4.8, for the two periods in which no marks were assigned, would your average have been sufficiently high to warrant an honorable characterization of service. Further, a review of your conduct and proficiency marks indicate that you never received a mark of 5.0 or 4.8 in either category during your enlistment. Therefore, the Board believes that had marks been assigned, it was unlikely that they would have sufficiently high to overcome the marks assigned at the time of your court-martial conviction which reduced your overall average. The fact that you were told that you would get an honorable discharge is without merit since it is the discharge authority who determines the characterization of service and the requisite marks for a fully honorable characterization are dictated by regulation.

Regulations provide that a Marine with a court-martial conviction requires waiver approval for reenlistment by the Commandant of the Marine Corps. Absent evidence to the contrary, the Board concluded that had you requested a reenlistment waiver, it would not have been favorably endorsed by the discharge authority or the commanding general. The Board believed that a special court-martial conviction and a general discharge provided sufficient justification for a non-recommendation for retention and assignment of an RE-4 reenlistment code. The Board thus concluded that the discharge and reenlistment code were proper and no changes are 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