



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

ELP
Docket No. 3131-01
28 September 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 26 September 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.

You enlisted in the Marine Corps on 3 October 1994 for four years at age 20. The record reflects that you were advanced to PFC (E-2) and served for 12 months without incident. However, during the four month period from October 1995 to February 1996, you received two nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of two instances of failure to obey a lawful order, two instances of disrespect, and failure to go to your appointed place of duty. You were formally counseled three times regarding the deficiencies in your performance and conduct and warned that failure to take corrective action could result in administrative separation.

On 3 April 1996 you were notified that you were being recommended for discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct, as evidenced by the foregoing disciplinary actions and the three counselings of

record. You were advised of your procedural rights, declined to consult with legal counsel or submit a statement in your own behalf, and waived the right to present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to a pattern of misconduct. A staff judge advocate reviewed the proceedings and found the case sufficient in law and fact. The discharge authority approved the recommendation and directed an other than honorable discharge. You were so discharged on 24 May 1996. Block 12a (Date entered on active duty) of your DD Form 214 is in error and should read 3 October 1994 vice 15 June 1994.

On 22 November 1999 the Naval Discharge Review Board denied your request for an upgrade of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your letters of reference and the fact that it has been more than five years since you were discharged. The Board concluded that these factors were insufficient to warrant recharacterization of your discharge, given your record of two NJPs and a summary court-martial conviction in 22 months of service. The Board noted that you were a high school graduate with average intelligence and, at age 20, you were older than average recruit. The Board believed you possessed the requisite skills to meet the demands of military service. However, you failed to learn from your disciplinary experiences and counselings. The Board noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. You have provided neither probative evidence nor a persuasive argument in support of your application. 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.

A correction to block 12a of your DD Form 214 is administrative in nature and does not require action by the Board. You may submit such a request for correction to the custodian of your records, the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St Louis MO 63132-5200.

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