



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

ELP
Docket No. 3539-01
21 September 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 19 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.

The Board found that you enlisted in the Marine Corps on 1 March 1965 for four years at age 19. The record reflects that you were advanced to PFC and served for nine months without incident. However, during the 12 month period from December 1965 to December 1966 you received two nonjudicial punishments (NJP) for failure to obey a lawful order, having an unclean and rusty rifle and magazine, and for being drunk and sleeping in a café restroom.

On 11 April 1967 you were convicted by special court-martial of disrespect; failure to obey a lawful order; appearing at work with trousers undone, belt unbuckled, and wearing no cover; a brief period of unauthorized absence (UA) of more than six hours, and a 28 day period of UA. You were sentenced to confinement at hard labor for six months, forfeitures of \$86 per month for six months, and reduction in rank to PVT (E-1). On 28 April 1967 the convening authority approved the sentence but suspended the

confinement and forfeitures in excess of three months for a period of six months.

The record of service (page 3) filed in the service record book shows two entries as to when you were released from confinement. The first states you were returned to duty on 12 June 1967 and the second says you were returned on 8 June 1967. However, page 6 of the record, which records lost time, shows your confinement ended on 12 June 1967.

On 24 October 1967 the unexecuted portion of the special court-martial sentence to confinement and forfeitures was vacated and ordered executed. The following day, you were convicted by summary court-martial of failure to obey an order and communicating a threat. You were sentenced to confinement at hard labor for 30 days and a forfeiture of \$36.

You served without further incident and were assigned to duty in Vietnam on 4 April 1968. You were again advanced to PFC and departed Vietnam on 22 April 1969. On 9 June 1969 you were released for the convenience of the government under honorable conditions and transferred to the Marine Corps Reserve. You received a general discharge upon completion of your military obligation on 17 July 1971.

The DD Form 214 shows that you had three periods of lost time, UA from 10 February to 10 March 1967 and two periods of confinement from 11 April to 12 June and 22 October to 21 December 1967. The DD Form 214 also indicates that eligibility for entitlement to the Good Conduct Medal commenced on 26 October 1967, the day after your summary court-martial conviction. Eligibility for the Good Conduct Medal requires three years of continuous active service without any disciplinary action.

Regulations provided that individuals discharged for the convenience of the government would receive the type of discharge warranted by the service record. Character of service is based, in part, on conduct and proficiency averages which are computed from marks assigned during periodic evaluations. Your final conduct and proficiency averages were 3.6 and 3.8, respectively. A minimum average mark of 4.0 was required in conduct for a fully honorable characterization of service at the time of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, Vietnam service, and the fact that it has been more than 32 years since you were discharged. The Board noted your contention that the lost time shown on your DD Form 214 is incorrect. You claim you were not confined on 6 June 1967 because you were on standby

to go to Israel during the six-day war and if what is shown on the record is true, the Marine Corps got your record mixed up with someone else's record. You further contend that a summary court-martial can only award 30 days of confinement and that the third period of lost time for 61 days of confinement, from 22 October to 21 December 1967, is also in error; that the Marine Corps intentionally "messed-up your records"; gave you a less than honorable discharge because of your race; and that you should be compensated in the amount of three million dollars for your pain and suffering. You further claim the record shows that you were awarded a Good Conduct Medal, which you never received.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of two NJP's, convictions by a special court-martial and summary court-martial, and the fact that you failed to achieve the required average in conduct. While there was an inconsistency in the dates as to when you were released from your first period of confinement, the Board has no way of determining now, 32 years later, the date you were actually released from confinement. Furthermore, you have provided no explanation why you waited 32 years to contest the amount of lost time on your DD Form 214. Your contention that a summary court-martial can only award 30 days of confinement is correct. However, you apparently forgot that the portion of the special court-martial sentence to confinement that was suspended, was later vacated and ordered executed prior to your summary court-martial conviction. Your claim of racial discrimination is neither supported by the evidence of record nor by any evidence submitted in support of your application. Your DD Form 214 does not indicate that you received a Good Conduct Medal, only that your eligibility to the medal commenced on 26 October 1967. The Board has no authority to award compensation for pain and suffering. The Board concluded that your discharge was proper and no change is warranted. Additionally, a Federal Bureau of Investigation report obtained by the Board noted that your post-service conduct has been marred by numerous convictions for shoplifting, burglary, petty theft, auto theft, possession of marijuana, receiving stolen property, attempting to escape, and possession of a firearm as a convicted felon. 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