



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

TJR
Docket No: 4903-01
27 December 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 Naval Records, sitting in executive session, considered your application on 19 December 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 16 February 1968 at the age of 17. Your record reflects that on 4 December 1968 you received nonjudicial punishment (NJP) for a two periods of unauthorized absence (UA) totalling 56 days and breaking restriction. The punishment imposed was correctional custody for 30 days and reduction to paygrade E-1.

Your record further reflects that on 17 July 1969 you were convicted by special court-martial (SPCM) of four periods of UA totalling 80 days, failure to obey a lawful order, and disobedience. You were sentenced to confinement at hard labor for three months and a \$234 forfeiture of pay.

On 30 January 1970 you were convicted by SPCM of a 99 day period of UA and were sentenced to confinement at hard labor for a month, restriction for a month, and an \$80 forfeiture of pay.

During the period from 26 March 1970 to 5 May 1971 you were in a UA status on two occasions for 350 days. On 1 June 1971 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing two periods of UA. Your record 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. On 22 July 1971 your request was granted and your commanding officer was directed to issue you an undesirable discharge. 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. On 28 July 1971, while awaiting discharge, you were arrested by civil authorities on charges of burglary and aggravated assault. On 13 October 1971, while in the custody of civil authorities you were issued an undesirable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you went UA to be with your ailing mother. However, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge given the seriousness of your lengthy periods of UA, and your request for discharge to avoid trial for these offenses. 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 with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Also, the Board noted that there is no evidence in your record, and you submitted none, to support your contention. 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