



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

ELP
Docket No. 4983-01
14 September 2001

[REDACTED]
[REDACTED] 6671

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 12 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 18 March 1953 for six years as a PFC (E-2). The record reflects during the six month period from April to September 1953 you received two nonjudicial punishments (NJP) and were convicted by a summary court-martial. Your offenses consisted of an 11 hour period unauthorized absence (UA), drunkenness, and two periods of UA totaling about 22 days. Thereafter, you served without further incident and were promoted to SGT (E-5).

On 25 July 1958 you were convicted by general court-martial of a 708 day period of UA, from 9 July 1956 to 17 June 1958. You were sentenced to confinement at hard labor for one year, total forfeitures, reduction in rank to PVT (E-1), and a dishonorable discharge. During your trial, evidence in extenuation and mitigation was presented to the effect that you tried to get a humanitarian transfer, but were denied; when you got home from Japan on leave you found your wife had taken the children and was living with another man; you requested and were granted a 15 day extension on your leave because you did not know what to do and needed more time for legal matters; and after you overstayed your leave, you and were afraid to go back to your command.

On 25 November 1958 the Navy Board of Review approved the findings and sentence but mitigated the discharge to a bad conduct discharge. Thereafter, you waived the right to request restoration to duty and requested that the bad conduct discharge be executed. You received the bad conduct discharge on 24 April 1959.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your limited education, deprived family background on a Native American reservation, low test scores, letters of reference, and the fact that it has been more than 42 years since you were discharged. The Board noted your contention to the effect that marital problems and alcohol abuse were contributing factors in the prolonged period UA which led to your general court-martial conviction and bad conduct discharge. However, the Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of the discharge given your record of two NJPs and convictions by a summary court-martial and a general court-martial. The Board noted the general court-martial considered your poor family background and marital problems during the presentation of evidence in mitigation and extenuation. You have provided no evidence of any circumstance which prevented you from returning from UA earlier than you did. The contentions that you were afraid or that you had no money to get back to base are without merit. Your conviction and discharge were effected in accordance with applicable law and regulations. The Board concluded that nearly two years of UA was too much UA to warrant recharacterization to honorable or under honorable conditions. 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