



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

TRG  
Docket No: 5492-01  
31 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 of the 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 30 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.

You enlisted in the Marine Corps on 16 January 1976 at age 19. Beginning on 18 October 1976 and continuing through 14 August 1979, you were an unauthorized absentee on five occasions totaling about 963 days. The documentation to support the discharge processing is not filed in your record. However, the DD Form 214 shows that you were discharged for the good of the service to avoid trial by court-martial, presumably for at least some of the periods of unauthorized absence. Therefore, the Board assumed that you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for periods of unauthorized absence. Regulations required that prior to submitting such a request, you confer with a qualified military lawyer, and be advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that when your request was granted you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. The record shows that the discharge under other than honorable conditions was issued on 21 September 1979.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and your expression of regret for your actions. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of unauthorized absences, and especially your request for discharge to avoid trial for the offenses. The Board believed that considerable clemency was extended to you when the 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 when your request for discharge was granted and should not be permitted to change it now. The Board concluded that your discharge was proper as issued 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.

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