



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

TRG  
Docket No: 6115-99  
21 June 2000

[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 13 June 2000. 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 16 February 1988 at age 17. The record shows that in May 1990 you were convicted by a special court-martial of wrongful possession of a 9MM pistol and metal knuckles, and wrongful use of provoking words. The court sentenced you to reduction to PFC (E-2), forfeitures of pay totaling \$800 and three months confinement at hard labor. You were restored to duty from confinement on 13 August 1990.

Subsequently, you were diagnosed with a personality disorder. The psychologist believed that you were a high risk to harm yourself or others and admitted you to the psychiatric unit. You informed the psychiatrist of several suicide attempts, and said that you had been expelled from school after assaulting a teacher. On 23 August 1990 the psychiatrist recommended your administrative discharge stating, in part, as follows:

Although not presently considered a danger to himself, he may make further suicidal threats or gestures if retained in the Marine Corps. He is deemed fit for return to duty for processing for administrative

separation ... It is recommended that he have no access to weapons until discharge.

On 18 September 1990 your company commander recommended that you be assigned a 1.9 mark in conduct.

Based on the psychiatric evaluation, you were processed for an administrative discharge. In connection with this processing, you elected to waive your procedural rights. On 10 November 1990 the discharge authority approved the recommendation of your commanding officer that you be discharged due to the diagnosed personality disorder with a general discharge. You were so discharged on 30 November 1990.

Character of service is based, in part, on conduct and proficiency averages which are computed from marks assigned during periodic evaluations. Your conduct and proficiency averages computed from the marks entered on your marks page were 4.0 and 4.3, respectively. A minimum average mark of 4.0 in conduct was normally required at the time of your separation for a fully honorable characterization of service. However, you apparently were not assigned a mark in conduct in connection with your special court-martial and period of confinement. Additionally, the recommended 1.9 mark in conduct was not included in the computation of your conduct mark average.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and good post service adjustment which includes service in the National Guard. You have submitted a copy of a psychiatric evaluation which was apparently done in connection with your enlistment in the National Guard. That evaluation notes that you had completed college, were working on becoming a CPA, and had otherwise made a good post service adjustment. The evaluation concluded by stating "I seriously doubt he ever had a personality disorder."

The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your conviction by a special court-martial and your failure to achieve the required average mark in conduct. Concerning the most recent psychiatric evaluation, the Board noted it was very brief, you did not provide the same psychiatric history that you provided the Navy psychiatrist, and the evaluations done by the Navy were not considered. Therefore, the Board believed that you have not refuted the Navy's diagnosis of a personality disorder. However, it is clear that whatever your psychiatric condition, it did not excuse the offenses which led to your special court-martial, the primary reason you were issued a general discharge.

Concerning the conduct mark average, the Board noted that you were not assigned a mark in conduct in connection with your

special court-martial conviction and period of confinement. If the 1.9 mark in conduct had been included in the computation, you would not have met the requirement of a 4.0 average mark in conduct and a general discharge would have been appropriate. In reaching its decision the Board was aware that Marine Corps regulations allow the discharge authority to substitute a general discharge in cases such as yours even if the conduct mark average would normally result in the issuance of an honorable discharge. In your case, the commanding officer and staff judge advocate both recommended a general discharge, and the discharge authority directed such a discharge. The Board concluded that the general 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