



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

TRG
Docket No: 6670-01
8 January 2002

[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 3 January 2002. 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 31 January 1966 for four years at age 17. Subsequently, you served in Vietnam from 17 May 1967 until 13 December 1968, a period of about 18 months. During your tour in Vietnam, you were awarded the Combat Action Ribbon. On 17 April 1969 you received an honorable discharge for the purpose of immediate reenlistment in the Marine Corps and payment of a reenlistment bonus. You reenlisted in the Marine Corps on 18 April 1969. A special court-martial convened on 13 May 1970 and convicted you of four periods of unauthorized absence totaling about 47 days and breaking restriction.

On 9 August 1970 you began a period of unauthorized absence which lasted until 7 April 1971. Your military record shows that on 23 April 1971 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for this 239 day period of unauthorized absence. Your record also 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. The Board found that your request was granted and, 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. You were discharged on 2 June 1971.

Subsequently, your discharge was recharacterized to general under the provisions of the Special Discharge Review Program (SDRP). However, this action does not establish your eligibility for veterans benefits based on the period of service ending 2 June 1971. In order to be eligible for veterans benefits, the action of the SDRP must be affirmed by the Naval Discharge Review Board or this Board. In order to implement the SDRP action a new DD Form 214 was issued showing that the previous undesirable discharge had been recharacterized based on the action taken by the SDRP. This information is necessary so that the Department of Veterans Affairs (DVA) will be aware that you are not eligible for DVA benefits based on that period of service. The action of the SDRP did not authorize the removal of any documentation from your file.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service, completion of an 18 month tour in Vietnam which included the award of the Combat Action Ribbon, and your contention that you have been a good citizen for many years. You are also requesting that original DD Form 214 issued on 2 June 1971 and the information on the SDRP 214 be corrected by removing all entries showing that you originally received an undesirable discharge. The Board found that these factors and contentions were not sufficient to warrant further recharacterization of your discharge or a confirmation of the SDRP action, given your record of misconduct and especially your request for discharge to avoid trial for a 239 day period of unauthorized absence. 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 when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

The Board was aware that in every case where an individual's discharge was recharacterized by the SDRP, the DD Form 214's were prepared in the same way as yours. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the way your DD 214's were prepared.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board noted that you originally enlisted for four years on 31 January 1966 and although you reenlisted on 18 April 1969, your original four year obligation would have expired on 30 January 1970. Your first period of unauthorized absence did not begin until 2 February 1970. Therefore, the Board believes that you are eligible for veterans benefits based on your first period of service. If you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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