



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

TJR
Docket No: 7148-01
5 April 2002



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 2 April 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 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 11 February 1969 at the age of 18. Your record reflects that you served for a year without disciplinary incident but on 8 March 1970 you received nonjudicial punishment (NJP) for disrespect and were awarded restriction for 30 days, extra duty for 14 days, and a \$50 forfeiture of pay. On 24 August 1970 you received NJP for damage of personal property, disrespect, and a wrongful attempt to leave base. The punishment imposed was a \$170 forfeiture of pay, restriction for 30 days, and a suspended reduction to paygrade E-2.

Your record contains two Naval Investigative Service (NIS) reports dated 10 and 15 September 1970 which contains statements from individuals alleging that you committed aggravated assault and participated in indecent acts with a 14 year old girl.

Subsequently, you were notified of pending administrative separation action by reason of unfitness due to frequent involvement of a discreditable nature with military authorities as evidenced by the two NJPs, a defective attitude, and

participating in indecent acts with a minor. At that time you waived your rights to consult with legal counsel, to present your case to an administrative discharge board, or to submit a statement in rebuttal to the discharge. On 20 September 1970 your commanding officer recommended an undesirable discharge by reason of unfitness. The discharge authority approved the foregoing recommendation and directed an undesirable discharge. On 22 October 1970 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the serious nature of your repetitive misconduct that not only resulted in two NJPs, but also apparently included aggravated assault and participating in indecent acts with a minor. Given all the circumstances of your case, the Board concluded your discharge was proper 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