



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

TJR
Docket No: 1430-02
15 August 2002

[REDACTED]

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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 13 August 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.

You enlisted in the Marine Corps on 5 September 1967 at the age of 20. You then served in Vietnam, where you earned the Combat Action Ribbon. Your service was without disciplinary incident until 22 February 1969 when you received nonjudicial punishment (NJP) for absence from your appointed place of duty and disobedience. The punishment imposed was a \$40 forfeiture of pay and restriction for two weeks.

On 11 November 1969 you began a 136 day period of unauthorized absence (UA) that was not terminated until you were apprehended by civil authorities on 6 April 1970 for possession of marijuana. On 14 May 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. 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. Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an undesirable discharge. 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. On 18 June 1970 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, service in Vietnam, and your post service conduct. It also considered your contention that your period of UA occurred because on your return home from Vietnam, you were beaten, robbed, kidnapped, and drugged. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your drug related misconduct and your lengthy period of UA which resulted in your request for discharge to avoid trial. Additionally, there is no evidence in the record, and you have submitted none, to support your contention of maltreatment upon returning from Vietnam. 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 with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. 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