



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

WMP
Docket No: 3493-02
11 December 2002



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 11 December 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. The Board also considered the advisory opinion dated 5 November 2002 from the Awards Branch, Headquarters Marine Corps, a copy of which is enclosed.

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 17 July 1980 for four years at age 17. Your record reflects that you served without incident until 15 April 1981, when you received nonjudicial punishment (NJP) for failure to obey a lawful order. The punishment imposed was a forfeiture of \$100.

On 26 September 1983 you were convicted by a special court-martial of wrongful use of marijuana. You were sentenced to confinement at hard labor for 75 days, forfeitures of \$382 per month for two months, and reduction to paygrade E-1. On 10 November 1983, the convening authority approved the adjudged sentence and ordered its execution.

You were then an unauthorized absentee from 9 January to 29 February 1984, a period of 51 days. On 30 March 1984, you submitted a request for an other than honorable discharge in lieu of trial by court-martial for this period of unauthorized absence. Prior to submitting this request, you conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 13 April 1984 your request for discharge was approved by the discharge authority. As a result of such 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 received the other than honorable discharge on 30 April 1984.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that you completed over three years service without incident. Nevertheless, the Board found that your 51 days of unauthorized absence and ensuing request for discharge clearly warranted an other than honorable discharge, especially when your prior disciplinary record is taken into account. The Board also 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 Navy when your request for discharge was granted and you should not be permitted to change it now. Concerning your entitlement to the Marine Corps Good Conduct Medal, the Board substantially concurred with the comments set forth in the advisory opinion. 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

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1650
MMMA-3
5 Nov 02

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: REQUEST FOR ADVISORY OPINION(S) IN THE CASE OF
[REDACTED] FORMER MARINE

1. A review of the records reveal that [REDACTED] was convicted by a Special Court Martial on November 18, 1983 for offenses committed during the period July 17, 1980 to July 16, 1983. Since the offense occurred within the 3-year period, he would not be entitled to a Good Conduct Medal.

2. The point of contact at MMMA is [REDACTED] at 784-9340.

