



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

TJR
Docket No: 9542-02
8 August 2003

[REDACTED]

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 5 August 2003. 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 3 January 1972 at age 18. On 28 September 1972 you received nonjudicial punishment (NJP) for possession of an unclean rifle and were awarded a \$70 forfeiture of pay and restriction for 10 days.

On 30 October 1973 you were convicted by special court-martial (SPCM) of three periods of unauthorized absence (UA) totalling 175 days. You were sentenced to confinement at hard labor for two months, \$150 forfeiture of pay, and a reduction to paygrade E-1.

During the period from 15 November 1973 to 12 September 1974 you were in a UA status for 301 days. On 6 November 1974 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, 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 on 22 November 1974 you received an

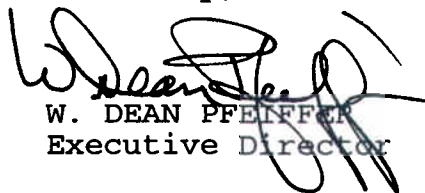
other than honorable discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that your discharge should be upgraded so that you may obtain veterans benefits. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of your repetitive misconduct, especially, the lengthy period of UA which resulted in your request for discharge. The Board believes that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and 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