



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

TRG  
Docket No: 3544-00  
21 February 2001

[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 13 February 2001. 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.

The Board found that you enlisted in the Marine Corps on 10 October 1973 at age 20. The record shows that during the period 13 May 1974 to 9 June 1975 you received nonjudicial punishment on two occasions and were convicted by a special court-martial. Your offenses were an unauthorized absence of about eight days, absence from your appointed place of duty, possession and transfer of a small amount of marijuana, and the sale of amphetamines. The sentence of the court-martial included confinement at hard labor for three months.

Your military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for wrongful use of morphine on a military installation. 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 on 4 August 1975 2001 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 15 August 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and limited education. The Board also considered your contention, in effect, that you should have received a medical discharge rather than a discharge by reason of misconduct. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for wrongful use of morphine. The Board was aware that discharge processing for misconduct takes precedence over discharge processing for a physically disability.

The Board also rejected your conclusion that had you gone to trial, a punitive discharge would not, or could not, have been adjudged. You elected to be discharged instead of going to trial. If you believed the charge against you was legally insufficient or you would not be discharged, you should have elected trial by court-martial. Further, any instance of drug use is serious, and could well have resulted in a punitive discharged from a court-martial. Finally, the Board noted that your use morphine occurred on a military installation and even under the more restrictive jurisdictional rules in effect at the time, this fact would have permitted the Marine Corps to try and convict you of this offense. 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.

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

Copy to:  
The Veteran's of Foreign Wars