



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

TJR
Docket No: 5036-01
17 January 2002

[REDACTED]

Dear [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 8 January 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 13 December 1982 at the age of 22. Your record reflects that on 10 January 1983 you received nonjudicial punishment (NJP) for wrongful use of marijuana and were awarded a reduction to paygrade E-1, restriction for 60 days, and a \$400 forfeiture of pay.

Your record also reflects that during the period from 3 July to 6 September 1983 you were in an unauthorized absence (UA) status on six occasions for a total of 19 days. However, the record does not reflect what, if any, disciplinary action was taken as a result of these periods of UA. You were also confined from 9 to 20 September 1983.

On 21 September 1983 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial. Once again, the record is without the specific offenses which resulted in your request. However, applicable regulations stated that such offenses had to be sufficiently serious to authorize a punitive discharge if the individual was tried by court-martial.

Your record clearly shows that prior to submitting this request for discharge, 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. On 4 October 1983 you were again UA for a day, but the record does not reflect the disciplinary action taken, if any, for this misconduct. Subsequently, your request for discharge was granted and your commanding officer was directed to issue you an other than honorable 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 7 October 1983 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. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct, to include wrongful use of marijuana and numerous periods of UA, and the offense which resulted in your request for discharge to avoid trial. 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