



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

TJR
Docket No: 5149-01
22 January 2002



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 15 January 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 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 17 December 1971 at the age of 18. Your record reflects that you served for two years months without disciplinary incident, but on 23 January 1974, you received nonjudicial punishment (NJP) for two periods of unauthorized absence (UA) totalling six days and absence from your appointed place of duty. The punishment imposed was a reduction to paygrade E-2 and restriction and extra duty for 15 days. On 5 March 1974 you received NJP for a five day period of UA and were awarded a \$200 forfeiture of pay, which was suspended for 90 days, and extra duty for 15 days. On 26 April 1974 you were convicted by summary court-martial (SCM) of a day of UA, absence from your appointed place of duty, disobedience, and failure to obey a lawful order. You were sentenced to a reduction to paygrade E-1, a \$150 forfeiture of pay, and confinement for 15 days.

You received your third NJP on 16 June 1974 for absence from your appointed place of duty and were awarded a \$100 forfeiture of pay and restriction and extra duty for 14 days. On 25 and 29 July 1974 you received NJP for using provoking gestures, disobedience,

and sleeping on post. On 30 August 1974 you received NJP for absence from your appointed place of duty and sleeping on watch. The punishment imposed was extra duty and restriction for 30 days and a \$100 forfeiture of pay. On 4 November 1974 you received your seventh NJP for absence from your appointed place of duty, four periods of UA totalling 15 days, three specifications of disobedience, two specifications of making false official statements, and failure to pay just debts. The punishment imposed was restriction for 60 days, extra duty for 45 days and a \$340 forfeiture of pay.

Your record also reflects that on 9 December 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for two periods of UA totalling four days, absence from your appointed place of duty, four specifications of disobedience, resisting arrest, and assault. Your record 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. Subsequently, on 7 January 1975, your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. 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 21 January 1975 you were issued an undesirable 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 repetitive misconduct, which resulted in seven NJPs and a court-martial conviction, and your request for discharge to avoid trial for your continued misconduct. 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