



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

TJR
Docket No: 5223-00
31 January 2001

[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 23 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 5 December 1974 at the age of 17. Your record reflects that on 15 July and again on 19 September 1975 you received nonjudicial punishment (NJP) for two specifications of misbehavior as sentinel. On 17 August and 6 October 1976 you received NJP for a four day period of unauthorized absence (UA) and two periods absence from your appointed place of duty.

Your record further reflects that on 6 January 1977 you received another NJP for absence from your appointed place of duty and were awarded restriction and extra duty for 14 days and a \$97 forfeiture of pay. On 4 April 1975 you began a 28 day period of UA that was not terminated until 2 May 1977. On 5 May 1977 you began a 264 day period of UA that was not terminated until 24 January 1978. Subsequently, on 27 January 1978, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing two periods of UA totalling 292 days. 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. Your request was granted and your commanding officer was directed to issue you an other than honorable 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 February 1978 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and good post service conduct. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the lengthy periods of UA and your request for discharge to avoid trial for these periods of UA. 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. The Board also noted that there is no evidence in the record, and you submitted none, to support your contention. 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