



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

TJR  
Docket No: 5233-01  
31 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 23 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 24 August 1972 at the age of 18. Your record reflects that on 22 March and again on 10 April 1973 you received nonjudicial punishment (NJP) for failure to go to you appointed place of duty and a two day period of unauthorized absence (UA). On 29 November 1973 you were convicted by special court-martial (SPCM) of four periods of UA totalling 85 days, failure to go to your appointed place of duty, and failure to obey a lawful order. The punishment imposed was a \$375 forfeiture of pay and confinement at hard labor for three months, a portion of which was suspended.

The record further reflects that on 22 January 1974 the suspended portion of the confinement at hard labor adjudged on 29 November 1973 was vacated due to your continued misconduct. On 2 February 1974 you were arrested by civil authorities and charged with possession of marijuana. The record does not reflect the disciplinary action taken, if any, for this misconduct. On 13 March 1974 you received NJP for a two day period of UA and were awarded a \$300 forfeiture of pay and restriction for 30 days.

Shortly thereafter, on 12 April 1974, you were convicted by summary court-martial (SCM) of a three day period of UA, breaking restriction, and disobedience. The punishment imposed was a \$215 forfeiture of pay and confinement at hard labor for 30 days, which was suspended for 30 days.

On 23 April 1974 you began a 101 day period of UA that was not terminated until 2 August 1974. On 21 August 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. 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, 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 17 October 1974 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. The Board also considered your contentions that you were a military prisoner, were mistreated because you would not serve in Vietnam and kill anyone due to your religious beliefs, you chose to go UA so that you would not have to kill anyone, and that the war was wrong. 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 lengthy period of UA 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