



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

TRG
Docket No: 7265-02
29 May 2003

[REDACTED]

[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 28 May 2003. 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.

You enlisted in the Marine Corps on 7 August 1962 at age 18. During the period 13 March to 28 April 1963 you received three nonjudicial punishments (NJPs). Your offenses were three periods of unauthorized absence totaling about five days. You were then convicted by special courts-martial on 13 August 1963 and 8 January 1964 of three periods of unauthorized absence totaling about 81 days. On 14 August 1964 you received NJP for being drunk in public.

During the period 15 October 1964 to 22 May 1965, you served with a battalion landing team in support of operations in Vietnam and were awarded the Combat Action Ribbon. You also received NJP for missing formation. On 9 August 1965, you received your sixth NJP for an improper haircut.

A third special court-martial convened on 5 November 1965 and convicted you of an unauthorized absence of about 31 days. The court sentenced you to reduction to pay grade E-1, forfeiture of \$75 pay per month for six months, confinement at hard labor for six months and a bad conduct discharge. The bad conduct discharge was issued on 4 April 1966.

On 31 October 1975 you were issued a Presidential Pardon. Subsequently, in a related action, you were issued a DD Form 215 showing that you received a clemency discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education and Vietnam service. The Board also considered your contention that you should be entitled to veterans' benefits because of the Presidential Pardon. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your extensive disciplinary record. The Board believed that after being convicted by two prior special courts-martial of periods of unauthorized absence, you had to know the consequences of further periods of unauthorized absence. Therefore, your last period of unauthorized absence was considered to be indicative of willful misconduct.

The Presidential Pardon and ensuing Clemency Discharge essentially mean that you have been forgiven for your misconduct. However, they do not change the fact that you were initially discharged as a result of a court-martial conviction and they do not establish eligibility for veterans' benefits. 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