



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

TRG  
Docket No: 7959-06  
25 January 2008

[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 23 January 2008. 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 reenlisted in the Marine Corps on 2 October 2002 after about three years of prior honorable service. You then served until 21 September 2004 without any disciplinary infractions. On 21 September 2004, you received nonjudicial punishment for graft because you were accepting money to not enter individuals on the duty roster.

On 15 July 2005 multiple specifications of violations of Article 92, 107 and 134, Uniform Code of Military Justice, were referred against you for trial by a special court-martial. Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial on those charges. Your record also 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. The Board found that your request was granted on 17 October 2005 and, 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. You were discharged on 2 November 2005 under other than honorable conditions.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your prior honorable service and your desire to again serve in the Marine Corps. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for numerous offenses. 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 when your request for discharge was granted and you should not be permitted to change it now. 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.

The Board believes that you may be eligible for veterans' benefits based on your prior honorable service. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the Department of Veterans Affairs.

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