



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

TJR
Docket No: 2916-07
11 February 2008



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 5 February 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 30 May 1975 at age 17. During the period from 25 to 29 October 1975 you were in an unauthorized absence (UA) status for four days. However, no disciplinary action was taken for this period of UA. On 31 October 1975 you began another period of UA that was not terminated until 23 December 1975 when you were apprehended and confined by civil authorities on a burglary charge.

During the period from 6 January to 1 April 1976 you were again UA on two more occasions, absent from your appointed place of duty, and failed to go to your appointed place of duty. On 23 April 1976 you received nonjudicial punishment (NJP) for wearing an improper uniform and being improperly dressed. The punishment imposed was a \$50 forfeiture of pay and restriction for seven days.

On 27 April 1976 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for two periods of UA totalling 131 days, absence from your appointed place of duty, and failure to go to your appointed place of duty. Prior to submitting this request, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 29 April 1976 your commanding officer recommended your request be disapproved and that the charges be referred for court-martial. However, on 5 May 1976, your request was granted and on 8 June 1976 you received an other than honorable discharge in lieu of trial by court-martial. 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.

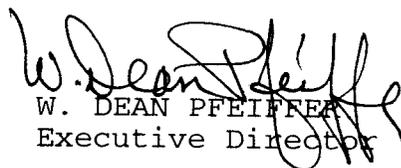
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and assertion that your discharge should be changed because of your family hardships. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct and your lengthy periods of UA from the Marine Corps, which also resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and 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