



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

TJR
Docket No: 3632-07
11 February 2008

[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 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 26 September 1972 at age 17 and served for nearly a year without disciplinary incident, but on 22 September 1973, you received nonjudicial punishment (NJP) for absence from your appointed place of duty and failure to obey a lawful order. The punishment imposed was a \$70 forfeiture of pay and restriction and extra duty for seven days.

On 31 December 1974 you were convicted by summary court-martial (SCM) of a 69 day period of unauthorized absence (UA). You were sentenced to restriction for 60 days, a \$100 forfeiture of pay, and reduction to paygrade E-1.

During the period from 5 February to 4 August 1975 you broke restriction on two occasions and were in a UA status on four occasions for 171 days. On 3 November 1975 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing misconduct. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, 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 on 12 November 1975 you received an undesirable discharge in lieu of trial by court-martial. As a result, 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 desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and lengthy periods of UA, 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