



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

TJR
Docket No: 3761-07
15 February 2008

[REDACTED]

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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 12 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 11 January 1968 at age 19 and served without disciplinary incident until 19 November 1969, when you received nonjudicial punishment (NJP) for absence from your appointed place of duty.

On 1 February 1970 you began a period of unauthorized absence (UA) that was not terminated until 26 April 1970. During this period you were declared a deserter. However, no disciplinary action is reflected in the record for this misconduct. About a month later, on 30 May 1970 you began yet another period of UA that was not terminated until you were apprehended by civil authorities on 6 October 1970 and held in confinement on charges of housebreaking and larceny. As a result, on 4 March 1971, you were convicted by civil authorities of grand larceny. You were sentenced to confinement for 10 years. However, your sentence was reduced to confinement for 1-to-7 years and to pay

restitution and court costs. The confinement was suspended and you were placed on probation for five years. On 17 March 1971 you were returned to military custody, thus ending a 291 day period of UA.

On 23 March 1971 you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After consulting with legal counsel, you elected to present your case to an administrative discharge board (ADB). On 10 May 1971 an ADB recommended an undesirable discharge by reason of misconduct due to civil conviction. Subsequently, your commanding officer also recommended an undesirable discharge by reason of misconduct. On 10 June 1971 the discharge authority approved these recommendations and directed an undesirable discharge, and on 16 June 1971, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, character reference letters, period of honorable service, combat history, and the passage of time. It also considered your assertions that you were told that your discharge would be automatically upgraded and of legal misrepresentation. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct, which resulted in conviction by civil authorities. Further, no discharge is automatically upgraded due solely to the passage of time or an individual's good post service conduct. Finally, there is no evidence in the record, and you submitted none, to support your assertions. 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