



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

TJR
Docket No: 6460-07
13 May 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 6 May 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 Reserve on 26 March 1982 at age 18. On 19 November 1982, prior to reporting for active duty, you received nonjudicial punishment (NJP) for sleeping on post. Shortly thereafter, on 24 December 1982, you began a period of active duty.

On 9 February and again on 11 June 1984 you received NJP for disobedience and absence from your appointed place of duty. During the period from 16 June to 3 December 1984 you were in an unauthorized absence (UA) status for 170 days, missed the movement of your ship, and were declared a deserter. On 16 January 1985 you began another period of UA that was not terminated until you were apprehended by military authorities on 28 January 1985.

As a result of the foregoing, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the two periods of UA totalling 182 days and missing the movement of your ship. 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. On 19 February 1985 your request for discharge was granted, and on 21 February 1985 you received an other than honorable 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, the passage of time and your 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 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. 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. Finally, there is no provision in law or regulations that allows for an automatic discharge upgrade or recharacterization of service after any specific period of time. 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,



ROBERT D. ZSALMAN
Acting Executive Director