



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

SMW
Docket No: 7473-07
15 May 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 14 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.

On 14 October 1968, you enlisted in the Marine Corps at age 17 with parental consent. On 20 February 1969, you had nonjudicial punishment for sleeping on post. On 26 September 1969, you were convicted by a special court-martial of four instances of unauthorized absence totaling about 120 days.

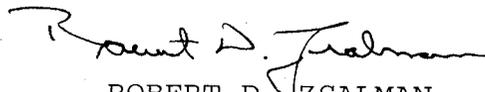
On 30 April 1970, while stationed at an overseas command, you requested an undesirable discharge (UD) to for the good of the service to avoid trial by court-martial for charges of wrongful appropriation of a tape recorder valued at \$130 and possession of 3.9 grams of marijuana. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 1 June 1970, the separation authority approved your request for a UD. On 16 June 1970, you were separated with a UD for the good of the service to avoid 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, carefully considered all potential mitigation, such as your youth. The Board also considered your contention that you were forced to request a UD. Nevertheless, the Board concluded that these factors were not sufficient to warrant changing the reason for separation or recharacterization of your discharge due to the seriousness of your misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial 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 you should not be permitted to change it now. Regarding your contention, there is no evidence in the record to show that you were forced to request a UD. 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