



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

TJR
Docket No: 7596-07
25 June 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 24 June 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 24 August 1978 at age 20 and served without disciplinary incident until 12 February 1980, when you received nonjudicial punishment (NJP) for sleeping on post. The punishment imposed was a \$448 forfeiture of pay, restriction for 25 days, reduction to paygrade E-1, and correctional custody for 15 days. About nine months later, on 13 November 1980, you received NJP for absence from your appointed place of duty and were awarded restriction and extra duty for 14 days and a \$130 forfeiture of pay, all of which was suspended for three months.

On 13 January 1981 you were in an unauthorized absence (UA) status for one day. However, the record does not contain the disciplinary action taken, if any, for this misconduct. On 4 April 1981 you received NJP for disobedience and were awarded restriction for 30 days and reduction to paygrade E-1. On 2 June 1981 you began a period of UA that was not terminated until 23 July 1981. As a result, on 17 August 1981, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA.

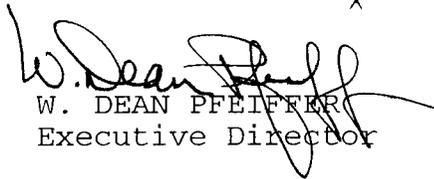
Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 26 August 1981 your request for discharge was granted, and on 16 September 1981 you received an 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 and your desire to upgrade your discharge. It also considered your assertions that your period of UA was the result of your wife experiencing pregnancy problems, and that you were to be discharged under honorable conditions for medical reasons. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct, which resulted in three NJPs and your lengthy period of UA, which was also the result of 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. 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