



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

TJR
Docket No: 8941-07
6 November 2008

[REDACTED]

[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 November 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 21 September 1972 at age 17. About three months later, on 20 December 1972, you were convicted by summary court-martial (SCM) of a three day period of unauthorized absence (UA), two specifications of disobedience, disrespect, failure to obey a lawful order, and drunk on duty. You were sentenced to confinement at hard labor for 14 days, a \$100 forfeiture of pay, and reduction to paygrade E-1.

On 9 and 27 November 1972 you received nonjudicial punishment (NJP) for disobedience, two periods of absence from your appointed place of duty, and insubordination. On 6 February 1974 you received your third NJP for being incapacitated for duty and insubordination. On 2 March 1974 you received NJP for use of provoking speech and gestures, drunk and disorderly conduct, communicating a threat, and assault.

Your record contains a 46 day period of UA from 3 June to 19 July 1974 in which you were declared a deserter. However, the record does not reflect the disciplinary action taken, if any, for this misconduct. On 1 October 1974 you began another period of UA that was not terminated until you were apprehended by civil authorities on 4 January 1975. As a result, on 28 February 1975, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing 95 day period of UA. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 10 March 1975 your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 27 March 1975 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and assertion that your alcohol abuse was the reason for your misconduct and discharge. It also considered your assertions that you wanted help with your alcohol problem, requested retention in the Marine Corps, and was told that your general discharge had been approved/signed. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your frequent and repetitive misconduct and your request for discharge to avoid trial by court-martial for a lengthy period of UA from the Marine Corps. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board 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. Finally, there is documented evidence in the record which is contrary to 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