



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

TJR
Docket No: 8742-07
27 October 2008

[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 21 October 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 reenlisted in the Marine Corps on 14 June 1976 after nearly four years of prior honorable service. You continued to serve without disciplinary incident until 27 June 1977, when you received nonjudicial punishment (NJP) for two periods of absence from your appointed place of duty. On 13 November 1977 you received NJP for two periods of unauthorized absence (UA) totalling nine days and making a false official statement. Shortly thereafter, on 29 November 1977, you began a period of UA that was not terminated until you were apprehended by civil authorities on 20 July 1978. During this period of UA you were also declared a deserter.

On 9 August 1978 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 which totalled 233 days. 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 21 August 1978 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 28 August 1978 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 prior honorable service, the explanation for your periods of UA, and assertions of undiagnosed mental problems and experiencing emotional problems while serving in the Marine Corps. It also considered your desire to upgrade your discharge so that you may receive medical and mental health care. 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 your lengthy period of UA. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Finally, the Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. Accordingly, your application has been denied.

You may be eligible for veterans' benefits which accrued during your first period of service. Whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA). If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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