



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

TJR  
Docket No: 8797-07  
6 November 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 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 8 July 1975 at age 18. A month later, on 18 August 1975, you received nonjudicial punishment (NJP) for failure to obey a lawful order and were awarded correctional custody for five days and a \$50 forfeiture of pay.

On 22 April 1976 you received NJP for a 23 day period of unauthorized absence (UA) and were awarded restriction for 60 days, a \$50 forfeiture of pay, and reduction to paygrade E-1. During the period from 28 June to 16 December 1976 you were in a UA status on two more occasions for 163 days and declared a deserter. On 22 December 1976 you began another period of UA that was not terminated until you were apprehended by civil authorities and convicted of automobile theft. Subsequently, you were released from civil custody but failed to return to your command. On 28 February 1977 you were apprehended by civil authorities, thus ending a 62 day period of UA.

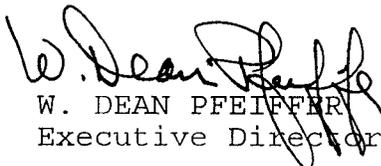
On 11 March 1977 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for three periods of UA totalling 225 days. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 23 March 1977 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 1 April 1977 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 you were having a lot of personal problems while serving in the Marine Corps. It also considered your desire to upgrade your discharge so that you may be eligible for medical benefits. 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 in both the military and civilian communities, and your request for discharge to avoid trial by court-martial for your lengthy periods 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 Marine Corps when your request for discharge was granted and you 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