



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 9570-07

29 December 2008

[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 16 December 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 14 April 1967 at age 20. During your active duty you served in Vietnam and participated in multiple combat operations and were awarded the Combat Action Ribbon and the Purple Heart. You were released from active duty on 6 March 1970 with your service characterized as honorable.

More than eight years later, on 6 December 1978, you enlisted in the Navy at age 31. On 11 July 1980 you received nonjudicial punishment for two periods of unauthorized absence totaling about 16 days and missing ship's movement. On 19 March 1981 you began a period of unauthorized absence which lasted until you were apprehended on 1 February 1982, a period of about 319 days.

A special court-martial convened on 7 May 1982 and convicted you of the 319 day period of unauthorized absence. During the court, your defense counsel contended that you were having adjustment difficulties because of your service in Vietnam and pointed out that a bad conduct discharge might result in the denial of veterans' benefits and requested a lenient sentence. The prosecution pointed out that 319 days of absence was a serious offense and that the psychiatric evaluations suggested an immature personality but that you were considered responsible for your actions. After consideration, the military judge sentenced you to forfeitures of pay, reduction to pay grade E-1, 50 days

confinement at hard labor and a bad conduct discharge. On 17 June 1982 you were released from confinement and were sent on appellate leave. The bad conduct discharge was issued on 8 September 1982.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service and your counsel's contentions that your defense counsel during the special court-martial should have had you enter a plea of not guilty by reason of mental instability and the court should have requested a complete psychiatric consultation. The Board found that these factors and contention were not sufficient to warrant recharacterization of your discharge given your lengthy period of unauthorized absence. It is clear from the court-martial record, that you were evaluated and found to be responsible for your actions and competent to stand trial. Further, the Board believed that sometime during a 319 day period of unauthorized absence you had to have made a knowing decision to remain absent. The military judge considered the mitigating factors and sentenced you to considerably less than the maximum sentence of six months confinement at hard labor and less than the maximum forfeitures. The Board concluded that the discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you are eligible for the full range of veterans benefits based on your first period of honorable service and it appears that you are receiving benefits from the Department of Veterans Affairs (DVA). If you have been denied any benefits you should appeal that denial under procedures established by the DVA.

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