



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

SJN
Docket No: 09851-07
26 November 2008

[REDACTED]

[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 25 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 and began a period of active duty on 15 August 1977 at age 17. During the period from 21 August 1979 to 18 March 1981, you received four nonjudicial punishments (NJP's) for two instances of disobedience, three days of unauthorized absence (UA), two specifications of disrespect, breaking restriction, and possession of drug paraphernalia. You also were convicted by special court-martial (SPCM) of assault. On 22 May 1981, you were convicted by a second SPCM of assault, breaking restriction, and disrespect. You were sentenced to confinement at hard labor, a forfeiture of pay, and a bad conduct discharge (BCD). You received the BCD after appellate review was completed.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and contention that you were falsely accused of assaulting your roommate at the time. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given your four NJP's and convictions by SPCM for assaulting fellow Marines. Concerning your contention, there is no evidence in the record to support it, and you submitted no such evidence. Further, the Board is

expressly forbidden from reviewing the findings of guilt rendered by a court-martial and must restrict its review to the appropriateness of the sentence. 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