



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

SMS  
Docket No: 10740-07  
21 August 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 20 August 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.

On 26 November 1973, you enlisted in the Marine Corps at age 18. On 8 January 1974, you began an unauthorized absence (UA) that ended on 9 January 1974. On 11 January 1974, you failed to comply with straggler orders and began another UA that ended on 16 January 1974, a period of about five days. On 17 January 1974, you began another UA when you failed to comply with straggler orders. On 16 February 1974, you were apprehended by civilian authorities and held pending charges of eluding police, reckless driving, and operating a vehicle without a license and the owner's consent. These charges were subsequently filed away. On 12 June 1974, you were returned to military authorities after being in a UA status for about 146 days. On 4 July 1974, you began another UA while enroute to Parris Island under guard. On 4 August 1974, you were apprehended by civilian authorities and held pending charges of tampering with a vehicle. On 21 August 1974, you were convicted in civil court of this offense and sentenced to

confinement and 12 months of probation. On that same date, you were returned to military authorities after being in a UA status for about 48 days.

On 27 September 1974, you requested an undesirable discharge (UD) for the good of the service to avoid trial by court-martial for four periods of UA totaling about 200 days. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 7 October 1974, the separation authority approved your request for a UD. On 11 October 1974, you were separated with a UD for the good of the service to avoid trial by court-martial. 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.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your youth. The Board also considered your contentions that personal problems and undiagnosed depression contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Regarding your contentions, there is no evidence in the record to show that personal problems or depression contributed to your misconduct. But, even if there were such evidence, that would not excuse your misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also 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,

A handwritten signature in cursive script, appearing to read "Robert D. Zsalmán". The signature is written in dark ink and is positioned above the typed name.

ROBERT D. ZSALMAN  
Acting Executive Director