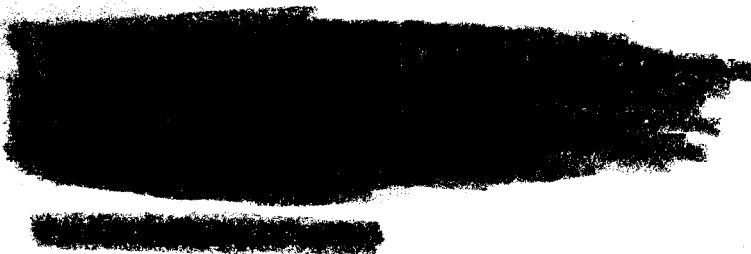




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 11342-07
19 November 2008



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 18 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 6 February 1973 at age 19 and served without disciplinary incident until 20 November 1973, when you received nonjudicial punishment (NJP) two periods of absence from your appointed place of duty. On 6 December 1973 you received NJP for absence from your appointed place of duty and were awarded a \$100 forfeiture of pay and restriction and extra duty for seven days.

During the period from 26 March to 18 May 1974 you received NJP on three other occasions for disturbing the peace by making excessive noise in the barracks, two specifications of failure to obey a lawful order, insubordination, and failure to go to your appointed place of duty.

On 25 June 1974 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the nine periods of failure to go to your appointed place of duty, assault, and disobedience. 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 5 August 1974 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 9 August 1974 you were issued an other than honorable discharge.

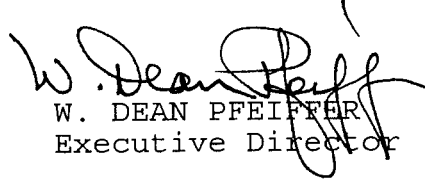
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, desire to upgrade your discharge, and assertion that you were not properly advised regarding the meaning and consequences of your discharge. It also considered your assertion that because you did not question authority, you signed the discharge papers as you were told. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and frequent misconduct and your request for discharge to avoid trial by court-martial for these offenses. 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. Finally, the record contains documented evidence that is contrary to your assertions. 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