



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

SJN
Docket No: 00127-08
19 December 2008



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 17 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 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 29 May 1969 at age 17. On 7 November 1970, you received nonjudicial punishment (NJP) for disobedience and absence from your appointed place of duty. On 29 November 1971, you were convicted by summary court-martial (SCM) of disrespect and making a false official statement.

On 22 March 1972, you were convicted by civil authorities of tampering with an automobile, grand larceny, and attempted murder. You were sentenced to six months in jail for tampering with an automobile, five years for grand larceny, and 10 years for attempted murder, which two years were suspended. Further, you were to serve three years probation upon release from jail.

Based on these convictions you were processed for an administrative discharge by reason of misconduct due to civil conviction. On 17 April 1972, you were notified of this pending administrative separation action. On 10 October 1975, you elected to consult with legal counsel and requested that your case be heard by an administrative discharge board (ADB).

On 17 July 1972, an ADB found that you had committed misconduct due to civil conviction, and recommended an undesirable discharge. Subsequently, your commanding officer concurred with the ADB findings and recommendations, and forwarded your case to the discharge authority. On 9 August 1972, the discharge authority directed that you be separated with an undesirable discharge by reason of civil conviction. You were so discharged on 29 August 1972.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and tour in Vietnam. Nevertheless, the Board found that these factors were not sufficient to warrant any change in your discharge given your civil convictions, and subsequent incarceration for very serious offenses. 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