



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

SMS  
Docket No: 602-08  
28 August 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 27 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

On 27 June 1969, you enlisted in the Marine Corps at age 17 with parental consent. On 19 January 1970, while on legal hold, you began an unauthorized absence (UA) that ended on 22 January 1970, when you were apprehended by civilian authorities. On 3 February 1970, you had nonjudicial punishment (NJP) for the three day period of UA. On 19 February 1970, you began another UA. On 19 March 1970, you were apprehended by civilian authorities and held pending charges of rape and unnatural acts, which were later reduced to carnal abuse and unnatural acts with a child under the age of 16. Based on the information currently contained in the record, it appears that you subsequently escaped from civil custody and returned to your command on 21 December 1970, after being in a UA status for about 305 days. On 1 February 1971, you were convicted by a special court-martial of the 305 day

period of UA. On 19 February 1971, you were released to civilian authorities and extradited to the Commonwealth of Massachusetts for civil action. On 24 March 1971, you were convicted in civil court of unnatural and lascivious acts with a child under the age of 16 and sentenced to a year in confinement.

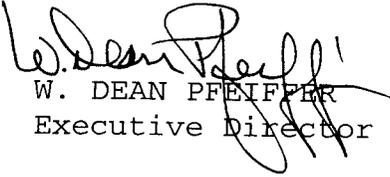
On 16 June 1971, your commanding officer initiated administrative separation by reason of misconduct due to a civil conviction. In connection with this processing, you acknowledged that separation could result in an undesirable discharge (UD) and waived the right to have your case heard by an administrative discharge board (ADB). On 23 July 1971, the separation authority approved the discharge recommendation and directed a UD by reason of misconduct due to a civil conviction. On 2 August 1971, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. The Board also considered the letter of recommendation from the Department of Veterans' Services and your belief that you should be granted a recharacterization of service based on your military service. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your civil conviction that resulted in a UD. Furthermore, the Board noted that in addition to your civil conviction, you had an NJP and were convicted by a court-martial. The Board also noted that you waived the right to have your case heard by an ADB, your best opportunity for retention or a more favorable characterization of service. Therefore, 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.

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