



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

SMS
Docket No: 1638-08
6 October 2008

[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 1 October 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 17 December 1985, you enlisted in the Marine Corps at age 18. On 5 August 1986, you had nonjudicial punishment for six instances of absence from your appointed place of duty, sleeping on post, and willful disobedience of a lawful order. On 20 October 1986, you began an unauthorized absence (UA) and were apprehended by civilian authorities on 30 December 1986. On 18 March 1987, you were returned to military authorities after being in a UA status for about 149 days. On 24 March 1987, you requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for the 149 day period of UA. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 14 April 1987, the separation authority approved your request for an OTH discharge. On 20 April 1987, you were separated with an OTH discharge for the good of the service to avoid trial by court-martial. As a result of this action, you were spared the stigma of another

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 and belief that enough time has elapsed to warrant upgrading your discharge. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. 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,


W. DEAN PFEIFFER
Executive Director