



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

TJR
Docket No: 2028-08
7 January 2009

[REDACTED]

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 6 January 2009. 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 28 August 1974 and served for nine months without disciplinary incident. However, during the period from 16 May to 5 December 1975 you received nonjudicial punishment (NJP) on six occasions for insubordination, disrespect, disobedience, communicating a threat, absence from your appointed place of duty, and four periods of unauthorized absence (UA) totalling 15 days.

On 29 January 1976 you were convicted by summary court-martial (SCM) of an 18 day period of UA and sentenced to a \$100 forfeiture of pay and confinement at hard labor for 30 days. Subsequently, you were processed for an administrative discharge by reason of unfitness. However, an administrative discharge board (ADB) recommended the discharge be suspended. On 4 June 1976 this recommendation was approved and the discharge authority suspended the discharge for 12 months. Nonetheless, on 27 July 1976, you received NJP for absence from your appointed place of duty, and on 10 September 1976 you were referred for a SCM due to another period of absence from your appointed place of duty. On

14 September 1976 the discharge authority vacated the suspended discharge. As a result, on 7 December 1976, your commanding officer was directed to discharge you under other than honorable conditions by reason of frequent involvement of a discreditable nature with military authorities. On 17 December 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to have your discharge upgraded. It also considered your assertion that your discharge was previously upgraded. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct, which resulted in seven NJPs and a court-martial conviction. Finally, the Board noted that you were given an opportunity to receive a better characterization of service when your discharge was suspended, but your misconduct continued, thus resulting in an other than honorable discharge. 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