



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

TRG
Docket No: 2296-08
12 November 2008

[REDACTED]

[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 4 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 12 January 1983 at age 20. On 17 June 1983 you began a period of unauthorized absence which lasted until you surrendered on 27 October 1983, a period of about 132 days.

Your military record shows that you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the 132 day period of unauthorized absence. Your record also shows that 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. The Board found that your request was granted on 23 December 1983 and, 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. You were discharged on 16 January 1984.

In its review of your application, the Board carefully weighed all potentially mitigating factors, such as your youth when the offense occurred and the good character references you submitted. The Board also considered your contention that you were told that the discharge would automatically change to honorable after six

months. However, there is no provision in the law or regulations which would require recharacterization of a discharge based solely on the passage of a period of time. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offense. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your 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