



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

TRG
Docket No: 2343-08
29 May 2009

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

You enlisted in the Marine Corps on 6 January 1976 at age 18. The record indicates that you attained a general classification test score of 59 and had completed 10 years of education. During the period from 2 May to 17 June 1976, you were an unauthorized absentee on two occasions totaling about 32 days. However, there is no disciplinary action in the record for these offenses. On 23 Jun and 13 July 1976, you received nonjudicial punishment for failing to obey stragglers orders and two other instances of disobedience. Subsequently, you were in an unauthorized absence status from 9 August to 8 September 1976, a period of about 30 days.

Apparently, in order to avoid trial for your offenses, you contended that your recruiter committed fraud when he arranged your enlistment and because of this fraud your enlistment should be voided. On 6 December 1976, Headquarters Marine Corps directed that your enlistment be voided and that an investigation be conducted into the allegations of recruiter misconduct. Your enlistment was voided on 6 December 1976.

On 18 January 1977 the investigation concluded that there was no evidence that your recruiter participated in a fraud to effect your enlistment. Since there is no evidence that the recruiter

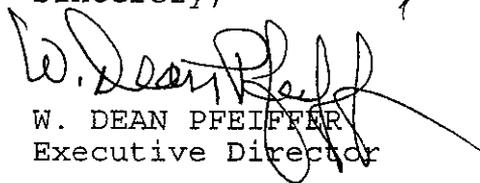
committed a fraud in order to affect your enlistment, it appears that your enlistment should not have been voided. Therefore, you should have received a court-martial for the 30 days of unauthorized absence.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, low score on the aptitude test and contention, in effect, that your recruiter committed fraudulent acts. The Board found that these factors and contention were not sufficient to warrant a correction to your record to show that you received a general discharge. The Board believed that you were fortunate to have received a void enlistment because if you had received a court-martial for your offense you could have been sentenced to a bad conduct 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