



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

RDZ:ecb
Docket No. 02680-08
15 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 12 May 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 began active duty in the Marine Corps on 19 February 1974 at age 18. Between June and October of 1974 you received four nonjudicial punishments. Your offenses were illegal gambling, breaking restriction, absence from appointed place of duty on three occasions, failure to obey a lawful order and two periods of unauthorized absence (UA) totaling 25 days.

On 4 January 1975 you began a 45 day period of UA. Upon your return you were placed in the brig to await trial by court-martial. You escaped from the brig and began another period of UA that lasted 327 days. After you returned to the Marine Corps you submitted a handwritten letter to the Marine Corps requesting, in effect, that you be given clemency for these two periods of UA which totaled 372 days. Specifically, after conferring with a military lawyer, you asked that you be administratively awarded an other than honorable discharge (OTH) in lieu of trial by court-martial where you could receive a bad conduct discharge and a substantial period of confinement at hard labor. The Marine Corps granted your request and you received an OTH on 20 February 1976.

In its review of your application the Board concluded that in view of the prolonged period of your last two UAs as well as your prior disciplinary record your discharge was proper as issued and should not be changed now as a matter of clemency. In this regard the Board believed that the Marine Corps showed you leniency when it granted your request not to be court-martialed.

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,



ROBERT D. ZSALMAN
Acting Executive Director