



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

BAN
Docket No: 03911-08
16 January 2009

[REDACTED]

[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 14 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 14 February 1972, and served without disciplinary incident until 28 March 1972, when you received nonjudicial punishment (NJP) for failure to obey a lawful order.

Shortly thereafter, you received the following disciplinary actions: on 20 October 1972, you received NJP for failure to obey a lawful order; on 20 November 1973, you received NJP for three specifications of failure to obey a lawful order by possessing alcohol in the barracks, dereliction of duty, and sleeping on duty; on 20 February 1974, you were convicted at a summary court-martial (SCM) for three specifications of unauthorized absence (UA); on 11 March 1974, you received NJP for disorderly conduct, and failure to obey a lawful order; and on 20 June 1974, you were convicted at a SCM for a UA, in excess of 27 days.

In addition, on 23 August 1974, you were granted a drug waiver and retained in the service for the self-admitted use of LSD, marijuana, and heroin, thereby obtaining the rehabilitation that you required. In spite of your drug use and disciplinary actions, you were allowed to be retained until 8 October 1974, when, through counsel, you requested to be separated for the good of the service in lieu of a trial by court-martial for pending additional charges of UA, dereliction of duty and failure to obey a lawful order. On 3 October 1974, the separation authority approved your request and on 1 November 1974, you were separated with an other than honorable discharge and an RE-4 reenlistment code.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and belief that enough time has elapsed to warrant upgrading your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of 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