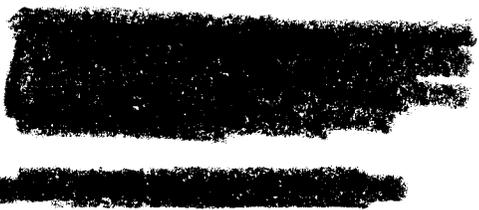




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

SMS
Docket No: 4439-08
5 February 2009



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 February 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.

On 29 March 1966, you enlisted in the Marine Corps at age 21. On 5 November 1966, you reported for duty in Vietnam. On 3 July 1967, while in Vietnam, you began an unauthorized absence (UA). On 17 November 1967, your UA ended when you were apprehended in the Noncommissioned Officer's Club. On 27 January 1968, you were convicted by a special court-martial (SPCM) of the 137 day period of UA. Your sentence included confinement at hard labor (CHL), forfeitures of pay, reduction in rank, and a bad conduct discharge (BCD), but the BCD was not approved.

During the period 15 to 26 May 1968, while still in Vietnam, you were in a UA status. On 28 May 1968, you were convicted by a summary court-martial of the 11 day period of UA. On 27 June 1968, while still in Vietnam, you began a UA that ended on 28 August 1969, when you were apprehended. On

6 December 1969, you were convicted by a SPCM of the 427 day period of UA. Your sentence included forfeitures of pay, CHL, and a BCD. On 27 March 1970, you returned to the United States to await discharge. On 2 April 1970, you waived the right to request restoration to duty. After the BCD was approved at all levels of review, on 10 May 1971, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth. The Board also considered your contentions that you were too scared to return to your unit after liberty and belief that your discharge would automatically change. Nevertheless, the Board concluded that these factors and contentions were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct, specifically, 575 days of total UA while stationed in Vietnam during the war. Furthermore, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. Therefore, the Board concluded that the 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