



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

SMS
Docket No: 4499-08
6 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.

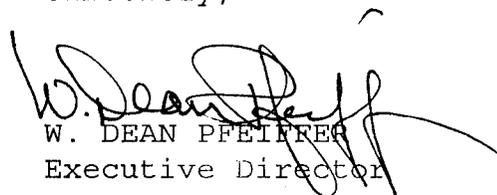
On 4 January 1973, you enlisted in the Marine Corps at age 20. During the period 1 September 1973 to 14 August 1974, you had nonjudicial punishment (NJP) on three occasions and were convicted by a summary court-martial. Your offenses included three instances of failure to go to your appointed place of duty and willful disobedience of a lawful order. On 24 December 1974, you were counseled regarding deficiencies in your performance and conduct. You then served without incident until 19 February 1976, when you were convicted by a special court-martial (SPCM) of disobedience of a lawful order, use of marijuana, and a three day period of unauthorized absence (UA). On 3 June 1976, you were counseled regarding deficiencies in your performance and conduct and warned that further infractions could result in disciplinary action or an undesirable discharge (UD).

On 29 June 1976, you had NJP for willful disobedience of a lawful order. During the period 3 to 27 July 1976, you were in a UA status on two occasions that totaled about 15 days. On 6 August 1976, you requested a UD for the good of the service to avoid trial by court-martial for charges of two instances of UA that totaled 15 days, disobedience of a lawful order, damage of personal property, and breaking restriction. The separation authority subsequently denied your request and you were convicted by a SPCM on 12 August 1976, for the offenses for which you were charged. Your sentence included confinement at hard labor, forfeitures of pay, and a bad conduct discharge (BCD). On 10 March 1977, your request for clemency and restoration to duty was denied. After the BCD was approved at all levels of review, on 28 November 1977, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potential mitigation, such as your youth and regret for your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your repetitive misconduct. 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