



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

SMS
Docket No: 6128-08
19 March 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 18 March 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.

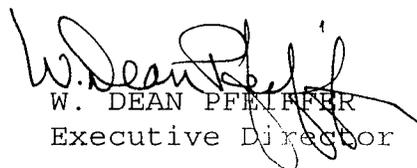
On 29 December 1978, you enlisted in the Marine Corps at age 20, two days after you were married. On 14 February 1979, you had nonjudicial punishment for disobedience of a lawful order. During the period 10 to 13 May 1979, you were in an unauthorized absence (UA) status. On 21 May 1979, you completed a dependency application, which was subsequently approved and administratively processed. During the period 16 June 1979 to 23 June 1980, you were in a UA status on two occasions totaling about 361 days. On 25 July 1980, you requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for the three periods of UA that totaled 364 days. At that time, you consulted with counsel, acknowledged the consequences of receiving such a discharge, and submitted a statement. Your counsel also submitted a statement detailing the circumstances that led to your misconduct. On 12 August 1980, the separation

authority approved your request for an OTH discharge for the good of the service to avoid trial by court-martial. On 26 August 1980, you were so discharged. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your youth, delayed payment of allowances, and your family's extenuating circumstances. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your lengthy UA's. Furthermore, the Board noted that although administrative action was not taken when you reported to recruit training that would have activated payment of dependent allowances, it was completed before you began your second period of UA. The Board also noted that your UA's then placed you in a non-pay status. 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