



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

TJR
Docket No: 8040-08
14 July 2009



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 7 July 2009. The names and votes of the members of the panel will be furnished upon request. 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 23 September 1981 at age 19 and began a period of active duty on 28 September 1981. You served for eight months without disciplinary infraction, but on 28 May 1982 you received nonjudicial punishment (NJP) for an 18 day period of unauthorized absence (UA) and failure to go to your appointed place of duty.

On 12 September 1983 you received NJP for two periods of UA totalling seven days. About three months later, on 15 December 1983, you were repeatedly counselled regarding deficiencies in your performance and conduct, specifically, unsatisfactory performance, failure to go to your appointed place of duty, nonresponsible personality traits which precluded you from being trustworthy, and UA.

On 6 January 1984 you were convicted by summary court-martial (SCM) of a seven day period of UA and sentenced to a \$300 forfeiture of pay, confinement at hard labor for 30 days, and reduction to paygrade E-1. During the period from 1 to 27 February 1984 your immediate superiors submitted written statements recommending discharge due to your unsatisfactory performance as evidenced by you being a consistent UA offender and a constant burden.

On 23 March 1984 you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). Subsequently, your commanding officer recommended an other than honorable discharge by reason of misconduct due to a pattern of misconduct. On 9 April 1984 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct, and on 25 April 1984 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. It also considered your assertions that you committed no grievous infractions, maintained high proficiency and conduct marks, and served honorably. It further considered your assertion that you were a wild kid who could not be controlled. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in two NJPs and a court-martial conviction. Further, you were given an opportunity to defend yourself, but waived your procedural right to consult with legal counsel and to present your case to an ADB. Finally, there is evidence in the record that is contrary to your assertions. Accordingly, your application has been denied.

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