



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

RDZ:ecb
Docket No. 08331-08
19 February 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 10 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.

You enlisted in the Marine Corps for two years on 30 July 1973 at age 26. Unfortunately you served for only a little over nine months when you received an undesirable discharge (UD) in lieu of trial by court-martial pursuant to your request. Specifically you requested a UD in order to avoid being court-martialed for the following offenses: (1) Communicating a threat to two commissioned officers and a noncommissioned officer by saying on or about 22 March 1974, "I'm going to get a .45 pistol and shoot the three of you." (2) Using disrespectful language to a commissioned officer on or about 22 March 1974 by calling him a "Jive Fucker." (3) Disobeying a lawful order of a

noncommissioned officer on or about 27 February 1974 (4) Being disrespectful in language on or about 27 February 1974 by saying "Fuck it, I am not going to run." (5) Assaulting a noncommissioned officer on or about 27 February 1974 by pushing him with your hands. In your written request for a UD, which you submitted after you conferred with a military lawyer who was assigned to represent you, you stated that you didn't like to take orders and were not suited to the Marine Corps. Your request for a discharge was granted and you thereby avoided the risk of being convicted by court-martial and sentenced to a substantial period of confinement at hard labor and a bad conduct discharge.

In view of the seriousness of your repetitive misconduct the Board concluded that your discharge was proper as issued and should not be changed now as a matter of clemency. In this regard the Board believed that considerable clemency was shown to you when your request for discharge was granted. Finally, the Board noted that the events of 22 March and 27 February were not your first disciplinary actions. On 20 and 21 November 1973 you were charged with being disrespectful to a commissioned officer, two noncommissioned officers and loitering on post. As in the case of your later misconduct you submitted a request for a UD to avoid trial by court-martial which was disapproved shortly before you committed the offenses that resulted in your issuance of a UD.

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