



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

SJN
Docket No: 09073-08
30 July 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 28 July 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.

You enlisted in the Marine Corps and began a period of active duty on 22 September 1975 at age 17. On 14 January 1977, you received nonjudicial punishment (NJP) for disobedience (not checking out on liberty). Based on the information currently contained in your record it appears you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for possession of marijuana and drug paraphernalia, a brief period of unauthorized absence (UA), disorderly conduct, and three specifications of absence from your appointed place of duty. Further, it appears your request was denied and you were convicted by summary court-martial (SCM) of those charges.

On 22 August 1977, you were convicted by SCM of two instances of absence from your appointed place of duty and failure to go to your appointed place of duty. On 8 September and 28 October 1977, you received NJP for seven specifications of breaking restriction, and using a government vehicle for personal use. On 30 November 1978, you were convicted by special court-martial (SPCM) of two specifications of larceny. You were sentenced to

confinement at hard labor, a forfeiture of pay, a reduction in paygrade, and a bad conduct discharge (BCD). However, on 28 December 1978, your commanding officer suspended the BCD for a period of six months.

On 23 July 1979, you were convicted by civil authorities of injury through robbery of a taxi driver in Japan. You were sentenced to a six year period of forced labor. Based on this conviction you were processed for an administrative discharge by reason of misconduct due to civil conviction. On 27 July 1979 you were notified of this pending administrative separation action and elected to consult counsel and have your case heard by a board of officers. On 17 August 1979, your case was forwarded and on 28 August 1979, the separation authority directed your separation by reason of misconduct due to civil conviction. You were so discharged on 27 August 1982.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant any change in your discharge given your three NJP's, two SCM convictions, and conviction by civil authorities and ensuing incarceration for a very serious offense. 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