



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

CRS
Docket No: 9146-08
27 July 2009

[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 22 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 11 March 1964. You received five nonjudicial punishments and were convicted by a special court-martial. The offenses included unauthorized absences, failure to obey a lawful order, and breaking restriction.

On 9 March 1970 you submitted a written request for discharge for the good of the service in lieu of trial by court-martial for an unauthorized absence of 416 days. Prior to submitting this request you conferred with a qualified military lawyer who advised you of your rights and warned of the probable adverse consequences of receiving an undesirable discharge. Your request was approved by the discharge authority, and you received an undesirable discharge on 25 March 1970.

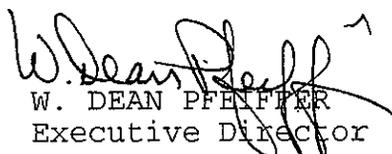
In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, overall service, and your contention that your discharge would be upgraded after six months. It found those factors insufficient to warrant corrective action in your case. There is no law or regulation which provides for the upgrade of a discharge based solely on the passage of a certain period of time.

The Board concluded that your service was properly characterized as under other than honorable conditions, given your lengthy periods of unauthorized absence. In addition, the Board believes that considerable clemency was extended to you when your request for discharge was approved since, by this action, you avoided the possibility of a Federal conviction, confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain 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 PFEFFER
Executive Director