



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

SJN
Docket No: 03697-08
2 April 2009

[REDACTED]

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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 31 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.

You enlisted in the Marine Corps and began a period of active duty on 17 June 1966 at age 17. During the period from 11 September 1967 to 11 June 1968, you received three nonjudicial punishments (NJPs) for dereliction of duty, disobedience, and a brief unauthorized absence (UA). On 25 July 1968, you were convicted by summary court-martial (SCM) of 21 days of UA. On 23 September 1968 and 11 July 1969, you were convicted by special court-martial (SPCM) of three specifications of UA totaling 33 days. As a result of your last SPCM, you were sentenced to confinement at hard labor, a forfeiture of pay, and a bad conduct discharge (BCD).

On 13 July 1969, you began a period of UA that lasted 824 days, ending on 15 October 1972. During this period of UA, on 18 July 1969, the convening authority suspended your BCD for six months. However, you began another period of UA that lasted over three years, ending on 6 February 1976. Subsequently, on 3 March 1976, you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for two periods of UA totaling over five years. Prior to submitting this

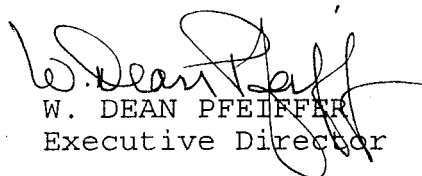
request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were warned of the probable adverse consequences of accepting such a discharge.

Your request for discharge was granted and on 25 March 1976, you received an other than honorable discharge for the good of the service in lieu of trial by court-martial. 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 application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, service in Vietnam, post service accomplishments, post service health issues, and character letters accompanying your application. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your misconduct that resulted in three NJP's, a conviction by SCM, two convictions of by SPCM, and charges being preferred to a court-martial for two periods of UA totaling over five years. The Board believed that considerable clemency was extended to you when your request for discharge 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 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