



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

SMS
Docket No: 4511-08
5 February 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 4 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

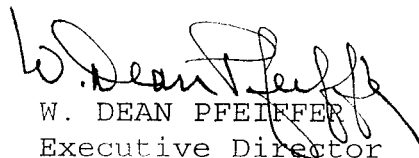
On 13 August 1973, you enlisted in the Marine Corps at age 19. On 21 January 1974, you began an unauthorized absence (UA) that ended on 4 February 1974, a period of about 14 days. On 8 February 1974, you received a medical evaluation during which you disclosed pre-service use of amphetamines and occasional use of lysergic acid diethylamide compounds. The evaluation found that you were not physically dependent on drugs and recommended counseling. On 13 February 1974, you had nonjudicial punishment for the 14 day period of UA. On 2 May 1974, a Naval Investigation Service (NIS) report stated that you were pending civilian action for an alleged armed robbery and a disciplinary action for your unauthorized possession of a dangerous weapon found by an NIS agent in your wall locker, specifically, a .22 caliber pistol. During the period 28 May 1974 to 27 April 1976, you were in a UA status on two occasions totaling about 664 days. On 12 May 1976, you requested an undesirable discharge (UD) for the good of the

service to avoid trial by court-martial for the two periods of UA that totaled 664 days. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. On 13 May 1976, the separation authority approved your request for a UD. On 18 May 1976, you were separated with a UD for the good of the service to avoid 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 entire record, carefully considered all potential mitigation, such as your youth. The Board also considered your contention that personal problems contributed to your misconduct. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to the seriousness of your misconduct, specifically, more than 22 months of total UA. Regarding your contention, there is no evidence in the record to support it, but even if there were such evidence, that would not excuse your misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial 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 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 PFEIFFER
Executive Director