



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

BAN
Docket No: 04835-08
30 March 2009

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 25 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 on 2 March 1967, and served without disciplinary incident until 29 July 1968, when you were in an unauthorized absence status on two occasions.

Shortly thereafter, on 3 September 1969, you were an unauthorized absentee and were declared a deserter for five years, four months, and three days. However, in January 1975, you surrendered to the military authorities and through counsel requested a separation in lieu of a trial by court martial. Your request was approved and on 20 January 1975, you were separated with an undesirable discharge and an RE-4 reenlistment code. As a result of this action, you were spared the stigma of a court-martial conviction and the penalties of a punitive discharge and confinement at hard labor

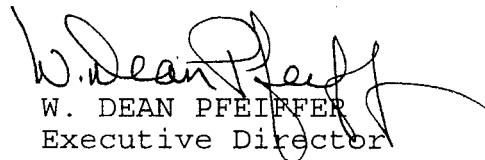
Additionally, prior to your separation, you agreed to serve eleven months alternate service due to the Presidential Proclamation Act. On 19 April 1976, upon your completion of alternate service, you were granted a full pardon by the President of the United States. The Presidential Clemency Board issued you a clemency discharge based upon your completion of alternate service. Presidential Proclamation 4313 of 16 September 1974, provided for voluntary alternative service under the auspices of the Reconciliation Service Program and the Selective Service System, for a specified period. Upon completion of the alternative service, former servicemembers would be granted a clemency discharge. This restored civil rights although not veterans' rights or benefits.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and belief that enough time has elapsed to warrant upgrading your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant a change to your clemency discharge because of the seriousness of your misconduct. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for a discharge to avoid trial by court-martial 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