



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

TJR  
Docket No: 5238-08  
19 March 2009



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 17 March 2009. The names and votes of the members of the panel will be furnished upon request. 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 28 February 1972 at age 17 and served for nearly five months without disciplinary incident. However, during the period from 5 July 1972 to 8 June 1973 you were in an unauthorized absence (UA) status on two occasions for 305 days. On 2 July 1973 you began another period of UA that was not terminated until you were apprehended by civil authorities on 22 August 1973. As a result of this arrest, on 9 September 1973, you were convicted by civil authorities of armed assault and robbery and a handgun violation. You were sentenced to an unspecified period of confinement. However, on 12 February 1974, you were returned to military custody.

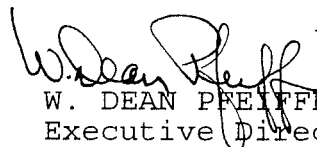
On 13 March 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing three periods of UA totalling 530 days. Prior

to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 3 April 1974 your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 11 April 1974 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge so that you may obtain medical assistance. It also considered your assertions that you were not afforded legal representation, and that you were not medically fit prior to entry into the Marine Corps. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your frequent and lengthy periods of UA which also resulted in your request for discharge to avoid trial by court-martial. Further, 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 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. Finally, there is no evidence in the record, and you submitted none, to support your assertions. Accordingly, your application has been denied.

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 PREIFFER  
Executive Director