



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

SJN
Docket No: 01114-09
8 December 2009

[REDACTED]

This is in reference to your application for correction of your late brother's 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 1 December 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 late brother's 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 3 July 1974 at age 18. On 15 July 1974, you received nonjudicial punishment (NJP) for unauthorized absence. As a result of a background investigation, it was discovered that you failed to disclose your prior undesirable service in the Army. You signed a sworn statement that you served with the Army from May to December 1967, and you received an undesirable discharge. Further, you stated that your Navy recruiter was made aware of your service in the Army. As a result of your failure to disclose this information, your commanding officer (CO) initiated administrative discharge action by reason of misconduct due to fraudulent entry. Subsequently, you waived your rights to submit a statement or present your case to an administrative discharge board (ADB).

On 20 September 1974, your CO recommended that you be discharged for misconduct due to fraudulent enlistment with an undesirable discharge. In his recommendation, the CO stated, in part, that although you alleged you informed your recruiter of your prior service in the Army, you signed an official document stating that

you had no prior service, knowing that any concealment of information on enlistment documents would be grounds for discharge by reason of fraudulent enlistment. Your case was reviewed and found to be sufficient in law and fact to support processing for fraudulent enlistment. On 13 November 1974, the discharge authority directed that you be discharged by reason of fraudulent enlistment with an undesirable discharge. You were so discharged on 20 November 1974.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge due to your fraudulent enlistment and misconduct that resulted in NJP. The Board noted you waived your right to an ADB, your best opportunity for retention or a better characterization of service. 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