



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

REC  
Docket No: 02159-09  
17 December 2009

[REDACTED]

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 15 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 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 29 October 1965, at age 18. On 11 April 1966, you were convicted at a special court-martial (SPCM) for wrongful possession of marijuana. You were sentenced to forfeiture of \$180, and confinement at hard labor for three months. On 12 October 1966, you were convicted at a SPCM for a period of unauthorized absence (UA) of 41 days. On 19 May 1967, you were convicted at your third SPCM for an additional period of UA totaling 33 days. On 29 December 1967, you entered numerous periods of UA totaling 805 days. Subsequently, upon your return, you submitted a request for an other than honorable discharge in order to avoid trial by court-martial for the lengthy periods of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and you received an other than honorable discharge in lieu of trial by court-martial. As a result of this action, you

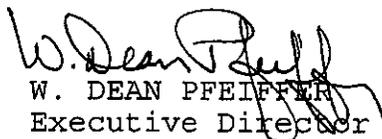
were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The discharge authority directed an other than honorable discharge by reason of for the good of the service based on your request. On 19 June 1970, you were so discharged. At that time you were assigned an RE-4 reenlistment code.

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, given your record of three convictions at SPCM's for serious offenses. 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. Further you are advised that there is no provision in the law or Navy regulations that allow for recharacterization of your discharge automatically due solely to the passage of time. 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