



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

TJR  
Docket No: 2316-09  
17 February 2010

[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 17 February 2010. 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 3 October 1974 at age 18 and served without disciplinary incident until 7 January 1975, when you received nonjudicial punishment (NJP) for an 18 day period of unauthorized absence (UA).

On 12 January 1976 you were arrested by civil authorities on charges of breaking and entering and larceny of property valued at approximately \$310. Shortly thereafter, on 19 February 1976, you were convicted by civil authorities of two counts of misdemeanor larceny. You were sentenced to probation for two years, a \$400 fine, \$225 restitution, and \$70 court costs. Subsequently, you were returned to military custody, and on 5 March 1976 you were convicted by summary court-martial (SCM) of a 24 day period of UA. You were sentenced to confinement at hard labor for 30 days and a reduction to paygrade E-2.

On 2 June 1976 you were notified of pending administrative separation action by reason of misconduct due to civil conviction. At that time you waived your right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 4 June 1976 your commanding officer recommended discharge under other than honorable conditions by reason of misconduct due to civilian conviction. On 17 June 1976 the discharge authority approved this recommendation and directed your commanding officer to issue you an other than honorable discharge by reason of misconduct due to civil conviction, and on 24 June 1976, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, post service conduct, and desire to upgrade your discharge. It also considered your assertion that you requested separation due to personal and marital problems. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct in both the military and civil communities. Further, you were given an opportunity to defend yourself, but waived your procedural right to present your case to an ADB. Finally, no discharge is automatically upgraded due solely to an individual's good post service conduct. 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 PFEIFFER  
Executive Director