



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

REC
Docket No: 03059-09
2 February 2010

[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 26 January 2010. 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 9 August 1978, at age 18. On 14 May 1979, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) totaling eight days. On 20 May 1980, you were convicted by special court-martial (SPCM) for desertion from 7 July to 3 November 1980 and wrongful assault on two occasions. You were sentenced to a reduction in pay grade to E-2, and confinement at hard labor for one month. Shortly after your conviction you continued this pattern of misconduct and commenced another period of UA totaling 48 days. On 30 July 1981, you were convicted by summary court-martial (SCM) for two additional periods of UA totaling seven days. You were sentenced to forfeitures of \$330, reduction in pay grade to E-1 and 30 days restriction. Subsequently, you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for the periods of UA from 7 November to 24 December 1980. 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 for the good of service on 2 October 1981. 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 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 concluded these factors were not sufficient to warrant recharacterization of your discharge because of your misconduct that resulted in one NJP, convictions by both a SPCM and SCM for periods of UA totaling over six months, and your request for discharge. 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. Finally, there is no provision of law or Navy regulations that allow for recharacterization of your service 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