



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

SJN

Docket No: 04246-09
29 March 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 23 March 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 reenlisted in the Marine Corps on 24 April 1972 after three years of honorable service. On 14 August and 20 December 1972, you received nonjudicial punishment (NJP) for four periods of unauthorized absence (UA) totaling three days. During the period from 9 May to 18 October 1973, you had three periods of UA totaling 163 days. On 7 November 1973, you submitted a written request for a good of the service discharge in order to avoid trial by court-martial for three periods of UA, disrespect, and two specifications of disobedience. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were 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 the service in lieu of trial by court-martial on 5 December 1973. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive

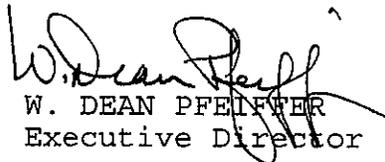
discharge and confinement at hard labor. However, on 28 June 1976, after satisfactorily completing alternative service pursuant to Presidential Proclamation 4313, your initial discharge was changed and you were awarded a clemency discharge (CD).

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, prior honorable service to include time served in Vietnam, and record of your last period of service. Nevertheless, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given the frequency and seriousness of your misconduct. Finally, the Board noted that you received a pardon and a CD. However, this pardon does not entitle you to benefits administered by the Department of Veterans Affairs (DVA). The Board concluded that a further change, which would make you eligible for DVA benefits, was not warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you may be eligible for veterans' benefits that accrued during your first period of service. Whether or not you are eligible for benefits based on either period of service is a matter under the cognizance of the Department of Veterans Affairs (DVA). If you have been denied benefits, you should appeal that denial under procedures established by the DVA.

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