



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

TJR
Docket No: 5498-09
13 August 2009

[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 11 August 2009. 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.

Your record reflects that you served honorably in the Army and the Army Reserve from 10 November 1964 to 9 November 1970.

You enlisted in the Marine Corps on 5 May 1972 and served without disciplinary infraction until 19 August 1972, when you began a 58 day period of unauthorized absence (UA) that was not terminated until 16 October 1972. The record does not reflect the disciplinary action taken, if any, for this period of UA.

During the period from 17 October 1972 to 12 July 1973 you were in a UA status on three more occasions. As a result, on 21 August 1973, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing periods of UA totalling 184 days. Prior to submitting this request, you conferred with a qualified military

lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 27 August 1973 your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 31 August 1973 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service in the Army, desire to upgrade your discharge, explanation regarding the circumstances of your discharge, and the passage of time. It also considered your desire to obtain veterans' benefits. It further considered your assertion of post traumatic stress disorder (PTSD) and alcohol abuse as the cause of your misconduct. Nevertheless, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and lengthy periods of UA and your request for discharge to avoid trial by court-martial because of your UA. Further, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial 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 you should not be permitted to change it now. Further, there is no evidence in the record, and you submitted none, to support your assertion of PTSD. Finally, even though there is evidence of alcohol abuse in your record, such abuse is not excusable for misconduct and you were responsible for your actions. Accordingly, your application has been denied.

You may be eligible for veterans' benefits which accrued during your service with the Army. Whether or not you are eligible for benefits is a matter under the cognizance of the Department of Veterans Affairs (DVA). If you were denied DVA benefits based solely on your Marine Corps service, you should file an appeal requesting benefits based on your honorable service in the Army.

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