



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

TAL
Docket No: 6011-09
28 April 2010



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 21 April 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 on 3 August 1973 at age 18. From 26 April 1974 through 13 August 1975, you received nonjudicial punishment (NJP) on seven occasions and one summary court-martial conviction (SCM) for failure to obey a lawful order, unauthorized absence (UA) from your unit for periods totaling 23 days, and willfully disobeying a superior officer. On 28 November 1975, you were convicted by special court-martial (SPCM) for UA from your unit for a period of 57 days. On 22 January 1976, you again received NJP for UA from your appointed place of duty. Based on the information currently contained in your record it appears that you submitted a written request for a good of the service discharge in order to avoid trial by court-martial. 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. Subsequently, your commanding officer forwarded his recommendation that you be discharged for the good of the service with an other than honorable (OTH) discharge. The separation authority approved an OTH discharge for the good of the service. On 5 August 1976 you

were so discharged. 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 given the seriousness of your misconduct that resulted in eight NJPs, one SCM, one SPCM and request for discharge to avoid trial. 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. 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