



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

REC  
Docket No: 06367-09  
12 May 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 11 May 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 17 December 1968. On 16 October 1969, you received nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status for 16 days. On 11 August 1970, you received NJP for making a false official statement. On 27 August 1970, you commenced a period of UA for 32 days. Subsequently, on 6 November 1970, you submitted a request for an administrative discharge in order to avoid trial by court-martial for the period of UA and your misconduct which included leaving your appointed place of duty, willfully disobeying a lawful order of your superior commissioned officer, violating a lawful general order by riding in a Vietnamese civilian taxi, possessing a ration card which was issued to a fellow Marine, carrying your M-16 rifle with a magazine inserted while not required in the performance of your duty and communicating a threat to a senior noncommissioned officer. Your request for discharge was granted and on 17 December 1970, you received an undesirable discharge in lieu of trial by court-martial. 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 the seriousness of your misconduct. 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. Further, you are advised that there is no provision of law or in Navy regulations that allow for recharacterization of your discharge automatically 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,



ROBERT D. ZSALMAN  
Acting Executive Director