



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

TJR
Docket No: 6473-09
2 June 2010

[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 1 June 2010. 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.

You enlisted in the Marine Corps on 9 October 1975 at age 17. You served without disciplinary incident until 28 May 1976, when you received nonjudicial punishment (NJP) for wrongful possession of marijuana. On 4 November 1976 you received NJP for failure to obey a lawful order and absence from your appointed place of duty.

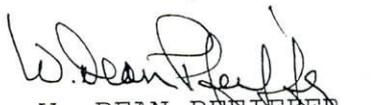
On 22 April 1977 you received NJP for a two day period of unauthorized absence (UA). During the period from 25 May to 25 July 1977 you were in a UA status on three more occasions for 31 days. On 25 August 1977 you began another period of UA that was not terminated until 30 December 1977, when you were apprehended by civil authorities. During this period of UA you were also declared a deserter and the charges were referred for trial by court-martial. As a result, on 21 March 1978, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing three periods of UA totalling 31 days and desertion resulting from a 127 day period of UA. 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. Subsequently, your request was granted and the 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 2 May 1978 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 youth and desire to upgrade your discharge for medical reasons. It also considered your assertion that you were told that if you stayed out of trouble for a year your discharge would be automatically upgraded. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive misconduct which resulted in three NJPs and lengthy periods of UA which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board 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. Finally, there is no evidence in the record, and you submitted none, to support your assertion. Accordingly, your application has been denied.

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