



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

TAL
Docket No: 7538-09
1 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 27 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 and began a period of active duty on 29 May 1969 at age 17. You received nonjudicial punishment (NJP) on five occasions for disobeying lawful orders and regulations, unauthorized absence (UA) from and failure to go to your appointed place of duty. You submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the pending charges of disrespect toward a commissioned officer, disobeying a lawful order, communicating a threat, and assault. 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. On 21 December 1976 your request was granted and the commanding officer was directed to issue you an undesirable discharge for the good of the service.

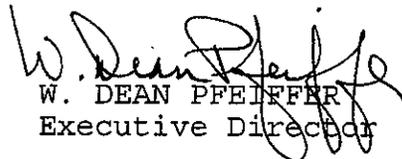
On 6 February 1977, under the Department of Defense Special Discharge Review Program (SDRP), the characterization of your undesirable discharge was changed to general under honorable

conditions. Nevertheless, this recharacterization does not entitle you to benefits administered by the Department of Veterans Affairs (DVA).

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 found that these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct. The Board also concluded that you received the benefit of your bargain with the Marine Corps when you were discharged at your request rather than being tried by court-martial, which could have resulted in a lengthy period of confinement as well as punitive discharge. Finally, the Board noted that your characterization of service was changed to general under honorable conditions under the provisions of the SDRP, but concluded that 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.

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