



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

BJG

Docket No: 9406-09

16 June 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 15 June 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice. The Board found that you entered active duty in the Marine Corps on 31 January 1973. You received nonjudicial punishment on four occasions and were convicted by a special court-martial for failure to obey a lawful order or regulation, assault of another Marine, unauthorized absence (UA) (two specifications totaling 280 days), and breaking restriction. On 1 March 1976, you requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for a UA totaling 62 days. At that time, you consulted with qualified military counsel and

acknowledged the adverse consequences of receiving such a discharge. The separation authority approved your request for an OTH discharge. On 22 March 1976, you were separated with an OTH discharge for the good of the service to avoid 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 entire record, carefully considered all potential mitigation, such as your youth. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to your serious misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. It was also clear to the Board 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. In view of the above, 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