



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

REC
Docket No: 10839-09
22 July 2010

[REDACTED]
[REDACTED]
[REDACTED]
Dear [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 14 July 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 14 August 1975, at age 17. On 19 April 1976, you received nonjudicial punishment (NJP) for disobeying a general order. On 14 October 1977, you were convicted by civilian court for having possession of a controlled substance and narcotics. You were sentenced to 14 days confinement, a fine of \$150, and two years probation. On 10 April 1978, you received NJP for two instances of being absent from your appointed place of duty. On 27 April 1978, you received NJP for disobeying a lawful order. On 7 June 1978, you commenced a period of unauthorized absence (UA) which lasted until you returned on 9 February 1981, totaling 997 days. Subsequently, on 16 February 1981, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for a period of UA totaling over 32 months. 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. Your request for discharge was granted and on 10 April 1981, you received an other than honorable 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 your misconduct that resulted in three NJP's and a lengthy UA period. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge was approved. Finally, the Board 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