



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

TJR
Docket No: 11222-09
2 September 2010



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 September 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 15 April 1969 at age 17 and served for about seven months without disciplinary infraction. However, on 24 November 1969 you began a period of unauthorized absence (UA) that was not terminated until 8 December 1969. During this period of UA you were convicted by civil authorities of public intoxication and sentenced to confinement for five days. On 23 December 1969 you received nonjudicial punishment (NJP) for the foregoing period of UA totalling 14 days. Nonetheless, on 31 December 1969, you began another period of UA that was not terminated until you were apprehended and confined by civil authorities on burglary charges. During this period of UA you were also declared a deserter. On 26 January 1970 you were convicted by civil authorities of third degree burglary and sentenced to confinement for one year. On 1 December 1970, upon completion of civil confinement, you were returned to military custody thus terminating a 334 day period of UA.

On 13 January 1971 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing period of UA totalling 334 days. 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 February 1971 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, desire to upgrade your discharge, and assertion that you were not afforded a chance to defend yourself. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct in both the military and civilian communities, and especially your lengthy period of UA from the Marine Corps, 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 documented evidence in the record that is contrary to your assertion that you were not afforded an opportunity to defend yourself. 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