



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

SJN
Docket No: 12776-09
16 September 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 14 September 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.

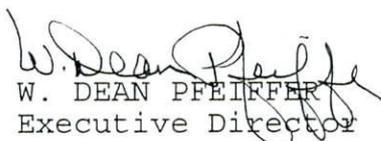
You enlisted in the Marine Corps and began a period of active duty on 7 May 1970. The Board found that you received four nonjudicial punishments (NJP's) for three periods of unauthorized absence (UA) totaling 12 days and absence from your appointed place of duty. You were also convicted by special court-martial (SPCM) of four specifications of UA totaling 176 days. You were sentenced to confinement at hard labor, a forfeiture of pay, a reduction in paygrade, and a bad conduct discharge (BCD). However, the convening authority suspended your BCD for the period of confinement plus 12 months thereafter. Unfortunately, you had two additional periods of UA totaling 66 days. Subsequently, on 11 April 1974, you received the BCD after appellate review was completed. On 30 June 1977, your initial discharge was changed and you were awarded a clemency discharge (CD) pursuant to Presidential Proclamation 4313.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth, overall record of service, and contention of racism. Nevertheless, the Board found that these factors were not

sufficient to warrant recharacterization of your discharge given the seriousness of your misconduct that resulted in three NJP's, conviction by SPCM for periods of UA totaling over five months, and the fact that you were given an opportunity for retention and to earn a better characterization of service when your BCD was suspended and you were placed on probation. Finally, the Board noted that you received a pardon and a CD under the Presidential Proclamation Clemency Program. However, neither the Department of Veterans Affairs (DVA) nor the Department of Defense considers a recipient of a CD to be entitled to any benefits denied by reason of the original discharge. The Board concluded that a further change, which would make you eligible for DVA benefits, was not warranted. Concerning your contention of racism, there is no evidence in the record to support it, and you submitted no such evidence. 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