



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

TJR
Docket No: 1555-10
20 October 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 13 October 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 24 February 1970 at age 21 and served without disciplinary infraction until 27 July 1970, when you were in an unauthorized absence (UA) status for one day. The record does not reflect the disciplinary action taken, if any, for this misconduct. On 24 September 1970 you were convicted by summary court-martial (SCM) of assault and sentenced to restriction for two months, an \$88 forfeiture of pay, and reduction to paygrade E-1.

In January and November 1971 you were apprehended by civil authorities on charges of selling marijuana. In both cases you were to remain in the state in which you were apprehended pending trial for the foregoing charges. On 20 December 1971 you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty and were awarded a three month suspended reduction to paygrade E-2 and a \$50 forfeiture of pay. However, on 18 January 1972 the suspended reduction was vacated due to your continued misconduct.

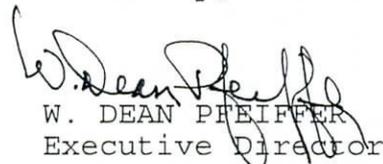
On 25 January 1972 you submitted a written request for discharge because of your involvement with civil authorities in January and November 1971. This request stated, in part, that because of your two pending trials in civil court for the sale of marijuana and having to remain in the state where the illegal actions took place, you were unable to further serve in the Marine Corps. On 8 February 1972 your request was approved and you were processed for an administrative separation by reason of convenience of the government due to civil involvement of a discreditable nature. Subsequently, the discharge authority directed your commanding officer to discharge you under honorable conditions, and on 10 February 1972, you were issued a general discharge.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge and change your reason for separation, which you believe is connected to homosexual misconduct. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge or a change of your narrative reason for separation because of the seriousness of your misconduct in both the military and civilian communities, and the fact that your misconduct included illegal sale of drugs on two occasions. Accordingly, your application has been denied.

In regards to your assertion that the discharge code "DD-257-MC" was incorrectly assigned because you were not charged as a homosexual is without merit. In this regard, DD-257-MC is the code used for the characterization of your discharge (**the type of certificate to be issued**), specifically, a "general under honorable conditions" discharge. This codes does not, in any way, reflect a record of homosexual misconduct.

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