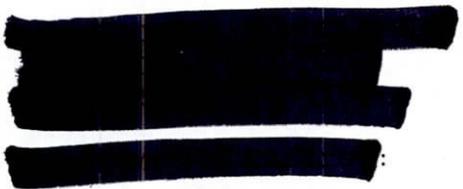




DEPARTMENT OF THE NAVY
 BOARD FOR CORRECTION OF NAVAL RECORDS
 2 NAVY ANNEX
 WASHINGTON DC 20370-5100

TJR
 Docket No: 3027-10
 26 January 2011



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 20 January 2011. 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 7 February 1972 at age 18 and served without disciplinary incident until 14 November 1972, when you were convicted by special court-martial (SPCM) of wrongful possession of marijuana and sentenced to confinement at hard labor for 30 days and a \$192 forfeiture of pay.

On 26 April 1973 you received nonjudicial punishment (NJP) for a five day period of unauthorized absence (UA). Shortly thereafter, on 21 July 1973, you began a period of UA that was not terminated until 28 February 1974. In May 1974 you received NJP for a one day period of UA. During the period from 19 June to 7 November 1974 you were again in a UA status on two more occasions.

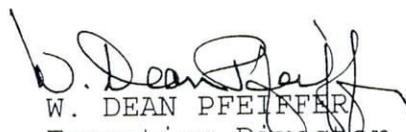
Although you were declared a deserter during two of the three periods of UA, only the UA charges were referred for trial. As a result, on 19 March 1975, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the three foregoing periods of UA totalling 376 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. On 27 March 1975 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 3 April 1975 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 and desire to upgrade your discharge. It also considered your assertion that you were told that your discharge would be upgraded six months after your separation since you were not convicted by a court-martial. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repetitive and lengthy periods of UA from the Marine Corps, which also resulted in two NJPs, a SPCM, and 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, no discharge is upgraded due solely to the passage of time. 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