



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

BAN  
Docket No: 04063-10  
12 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 6 January 2011. 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 3 December 1973, and served without disciplinary incident until 19 February 1974, when you received nonjudicial punishment (NJP) for failure to obey a lawful order. Shortly thereafter, you received the following disciplinary action: on 23 June 1974, you received NJP for assault; on 23 June 1975, you received NJP for an unauthorized absence (UA), and misbehavior as a sentry; on 26 November 1975, you received NJP for two specifications of UA; on 10 February 1976, you received NJP for three specifications of UA; and on 14 July 1976, you were convicted at a special court-martial (SPCM) of three specifications of UA, and misbehavior of a sentry. Your sentence included a bad conduct discharge. Your SPCM was set aside due to a procedural error. You continued your misconduct by going UA and were pending a court-martial for seven specifications of UA. However, you requested through counsel, to

be separated with an undesirable discharge to escape a trial by court-martial. Therefore, on 27 May 1977, you were separated with an undesirable discharge and an RE-4 reenlistment code. As a result of this action, you were spared the stigma of another court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and belief that enough time has elapsed to warrant upgrading your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. Further, there is no provision in the law or regulations that allows for recharacterization of service due solely to the passage of time. Finally, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. It was clear to the Board 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. 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