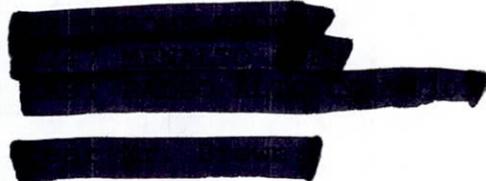




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BAN
Docket No: 04254-10
14 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 13 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 23 February 1972, and served without disciplinary incident until 10 May 1972, when you received nonjudicial punishment (NJP) for failing to obey a lawful order. Shortly thereafter, you received the following NJP's: on 6 September 1972, for disobeying a lawful order and communicating a threat; on 31 October 1972, for two specifications of unauthorized absence (UA); on 9 November 1972, for two specifications of failing to obey a lawful order and disrespect; and on 7 December 1972, for lying down on post. Furthermore, you were in a UA status on two separate occasions and were pending a court-martial for those charges. You requested an other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial. At that time, you consulted with counsel and acknowledged the consequences of receiving such a discharge. The separation authority approved your request for an OTH discharge for the good of the service to

avoid trial by court-martial. On 29 June 1973, you were so discharged. 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.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your claim that your discharge was unjustifiable. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. 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