



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

TAL
Docket No: 7959-06
26 March 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 17 March 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 reenlisted in the Marine Corps on 2 October 2002 and served without disciplinary incident until 21 September 2004, when you received nonjudicial punishment (NJP) for graft, by accepting money not to enter individuals on the duty roster. On 15 July 2005, charges were referred against you for trial by a special court-martial (SPCM), for four instances of failure to obey an order, two instances of making false official statements and four instances of indecent acts. On 15 August 2005, you submitted a written request for an other than honorable (OTH) discharge in order to avoid trial by court-martial. 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 17 August 2005 your request was granted and the commanding officer was directed to issue you an OTH discharge. 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. As a result of this action on

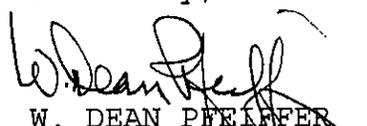
2 November 2005 you were discharged under OTH conditions. At that time, you were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth, prior honorable service, and desire to change your reenlistment code. Nevertheless, the Board concluded these factors were not sufficient to warrant changing your reenlistment code given the seriousness of your misconduct which resulted in NJP and 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. The Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and should not be permitted to change it now. Finally, an RE-4 reenlistment code must be assigned to all Marines discharged due to misconduct. Accordingly, your application has been denied.

The Board found that you may be entitled to veterans' benefits for your first period of honorable service. You may contact your local Department of Veterans Affairs to make that determination.

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