



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

BJG
Docket No: 8832-10
10 February 2011

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 8 February 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You entered active duty in the Marine Corps on 28 December 1966. On 22 October 1968, you extended your enlistment for two years to attend a military occupational specialty course. You later requested an under conditions other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for three specifications of unauthorized absence (UA) totaling 232 days. At that time, you waived your right to consult with qualified military counsel and acknowledged the adverse consequences of receiving such a discharge. The separation authority approved your request for an under

conditions OTH discharge. On 12 January 1970, you were separated with an under conditions OTH discharge for the good of the service to avoid trial by court-martial. 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, carefully considered all potential mitigation, such as your youth and combat service in Vietnam. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to your three periods of UA totaling over eight months. Furthermore, 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 also clear to the Board that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board noted that your discharge was upgraded to a general characterization of service under the Special Discharge Review program, however, this upgrade does not provide veterans' benefits.

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

Copy to:
Clark C. Barnes, Esq.