



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

REC
Docket No: 09118-10
5 May 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 4 May 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 17 January 1968, at the age of 17. On 9 February 1968, you received nonjudicial punishment (NJP) for violation of a regulation by smoking without permission. On 27 September 1968, you received NJP for being in an unauthorized absence (UA) status for 17 days. On 18 April 1969, you received NJP for failing to maintain a clean rifle. On 30 April 1970, you received NJP for being absent from your appointed place of duty, and disobeying a direct order. On 18 June 1970, you received NJP for two incidents of being UA. On 5 April 1971, you were convicted by civilian court in Adams County, Nebraska, of possession of marijuana. You were sentenced to a fine of \$147, and two years probation. On 23 June 1970, you commenced a period of UA that lasted 52 days. On 24 August 1970, you commenced a second period of UA that lasted 176 days. On 12 May 1971, you requested a good of the service discharge in order to avoid trial by court-martial for the periods of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and were warned of the probable adverse consequences of accepting such a discharge. Your request for discharge was granted and on

4 June 1971, you received an other than honorable discharge (OTH) for the good of 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 application, carefully weighed all potentially mitigating factors, such as your youth, and Vietnam service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your five NJP's, UA totaling over seven months, and request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved. The Board also concluded 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. Further, you are advised that there is no provision in the law or Navy regulations that allows for recharacterization of your discharge automatically due solely to the passage of time. 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