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

TJR
Docket No: 11696-10
25 August 2011

[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 23 August 2011. 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 enlisted in the Marine Corps on 1 June 1978 at age 18 and served for nearly seven months without disciplinary incident. However, on 6 December 1978, you received nonjudicial punishment (NJP) for disrespect and were awarded restriction for five days.

On 11 January 1979 you began a period of unauthorized absence (UA) that was not terminated until 8 March 1979. During this period of UA you also missed the movement of your ship and were declared a deserter. As a result of the foregoing, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for desertion and missing the movement of your ship. 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. During the period from 19 June to 14 September 1979 you were again in a UA status on three more occasions for 32 days. The record does not reflect the disciplinary action taken, if any, for this misconduct.

Nonetheless, your request for discharge was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 10 November 1979 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your youth and desire to upgrade your discharge. It also considered your assertion that you did nothing that would warrant an other than honorable discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct, lengthy period of UA which resulted in your request for discharge, and repetitive periods of UA from the Marine Corps for which no disciplinary action was taken. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. Further, the Board concluded 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. Finally, there is documented evidence in the record which is contrary to your assertion. Accordingly, your application has been denied.

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

W. DEAN PFEIFFER
Executive Director