



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

TAL
Docket No: 141-11
29 September 2011

[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 28 September 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 and began a period of active duty on 15 April 1977 at age 18. You received nonjudicial punishment (NJP) on two occasions for two instances of unauthorized absence (UA) from your unit for a period totaling 12 days. On 13 January 1978, you were convicted by special court-martial (SPCM) of two instances of UA from your unit for a period totaling 48 days and disobeying a lawful written order by consuming alcohol in an unauthorized area. The sentence imposed was hard labor without confinement and a forfeiture of pay. On 30 March 1978, you were in a UA status from your unit until you surrendered on 25 July 1978, a period of 115 days. On 26 July 1978, you submitted a written request to be discharged for the good of the service to avoid trial by court-martial for the forgoing period of UA. You conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. The separation authority approved an OTH discharge for the good of the service. On 2 August 1978 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 application, carefully weighed all potentially mitigating factors, such as your youth and overall record of service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your two NJP's, a SPCM and request for discharge to avoid trial. 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. Finally, there is no provision of law or in Navy regulations that allows for recharacterization of service 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