



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

BJG
Docket No: 2970-11
12 December 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 6 December 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 enlisted in the Marine Corps and entered active duty on 30 December 1969. You received nonjudicial punishment on seven occasions for disobeying a lawful order (two specifications), being incapacitated for the proper performance of your duties, assault, wrongful appropriation, wrongful possession and use of Dexedrine, three periods of unauthorized absence (UA) totaling six days, and being drunk and disorderly. You then requested an under conditions other than honorable (OTH) discharge for the good of the service to avoid trial by court-martial for four periods of UA totaling 76 days, going from your appointed

place of duty, and disobeying a lawful order. At that time, you consulted 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 31 July 1973, 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 potentially mitigating factors, such as your youth and Vietnam service. Nevertheless, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge due to your numerous acts of misconduct, periods of UA that totaled over two months, and request for discharge. 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. You are advised that no discharge is automatically upgraded due merely to the passage of time or post service good conduct. 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.

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