



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD SUITE 1001
ARLINGTON VA 22204-2490

BAN
Docket No: 05071-11
21 February 2012

[REDACTED]

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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 15 February 2012. 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 entered active duty service in the Marine Corps on 3 March 1956, and served without disciplinary incident until 23 August 1956, when you were convicted at a special court-martial (SPCM) of an unauthorized absence (UA) for three days and breaking restriction. Shortly thereafter, you received the following disciplinary action: on 10 July 1957, you received nonjudicial punishment (NJP) for disrespect; on 18 July 1959, you received NJP for disobeying a lawful order, and being intoxicated in public; on 10 September 1959, you were convicted at a summary court-martial (SCM) of failing to obey a lawful order, forging a liberty pass, and stealing a liberty box; and on 17 December 1959, you were convicted at a SPCM of larceny and a general order violation. You were pending a court-martial for UA and disrespect. You requested an other than honorable (OTH) characterization of service to escape trial by court-martial. At

that time, you consulted with counsel and acknowledged the consequences of such a discharge. Therefore, on 15 January 1960, you were separated with an OTH discharge and an RE-4 reenlistment code, in lieu of 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 and application, carefully weighed all potentially mitigating factors, such as your youth, claim that you were never convicted of a felony or at a court-martial. However, the Board concluded that in fact, you were convicted at three courts-martial and that your claims were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial 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 you should not be permitted to change it now. 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