



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

[REDACTED]
Docket No. 4046-16
JAN 03 2017

[REDACTED]
Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 August 2016. 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the United States Marine Corps and began a period of active duty on 2 November 1972. You served for seven months without any disciplinary incident, until 13 June 1973 when you entered an unauthorized absence period until you were apprehended on 19 June 1973. On 20 June 1973 you were declared a deserter when you entered an unauthorized absence period, which was terminated on 14 July 1973 when you were apprehended. On 21 August 1973, you again declared a deserter when you entered an unauthorized absence period on 23 July 1973, which was terminated on 14 October 1973 when you were apprehended.

Subsequently, on 30 October 1973, you acknowledged along with defense counsel that you understood the "Undesirable Discharge: Acknowledgement of Uniform Code of Military Justice, Article 31, Rights Warning." On 30 October 1973, you submitted a written request for discharge to escape court-martial. Your request is based on your commission of three periods of unauthorized absences committed during the periods of 13 June 1973 through 19 June 1973, 20 June 1973 through 14 July 1973, and 23 July 1973 through 14 October 1973. Subsequently, your commanding officer recommended that you be discharged with an undesirable discharge for the good of the service. On 6 November 1973, the discharge authority approved the recommendation. Commanding General, [REDACTED] FMF, [REDACTED] forwarded to Commandant of the Marine Corps to effect your discharge with a tentative discharge date of 16 November 1973. On 15 November 1973, you were discharged by reason of

discharge for the good of the service with a characterization of service under other than honorable conditions.

Your application claims that "My record of Court-Martial convictions indicates only isolated and minor offenses. As part of my plea deal, I received counsel advice that lead [led] me to believe my discharge would be automatically upgraded to a General Discharge under Honorable Conditions in one year's time." Your application further claim "I was unaware that could apply for a hardship discharge because I lacked counsel and/or representation." However, the Board noted that before signing the Article 31 Rights Warning, you spoke with a defense counsel. Furthermore, the Board considered the fact that before you submitted your 30 October 1973 statement, you consulted with counsel where you acknowledged that your offenses were triable by court-martial with a maximum punishment that included a Bad Conduct Discharge and other probable adverse consequences of accepting such discharge; and you declared that "Prior to submitting this request I have been afforded the opportunity to consult with [a] Judge Advocate General and I have consulted with the following Judge Advocate counsel and I am entirely satisfied with his advice..."

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge. However, the Board determined that these factors were not sufficient enough to warrant relief in your case because of the seriousness of your misconduct. Furthermore, the Board found 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.

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 evidence within one year from the date of the Board's decision. New evidence is evidence not previously considered by the Board prior to making its decision in this case. 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,

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director