



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

TJR
Docket No: 39-99
22 July 1999

[REDACTED]

Dear [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 13 July 1999. 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.

The Board found you enlisted in the Marine Corps on 27 May 1971 at the age of 20. Your record reflects that on 25 January 1972 you were convicted by general court-martial (GCM) of conspiracy, forcible sodomy, three instances of assault, committing an indecent, lewd, and lascivious act, and two incidents of communicating a threat. You were sentenced to confinement at hard labor for 10 years, forfeiture of all pay and allowances, and a dishonorable discharge (DD). On 15 October 1973 you submitted a written request for clemency. However, the discharge authority denied your request. Subsequently, the findings and sentence of the GCM were reviewed by the convening authority, who set aside one specification of assault and reduced the confinement to six years, but otherwise approved the findings and sentence. The Navy Court of Military Review approved the findings, as modified by the convening authority, but further reduced the confinement to three years. Accordingly, the DD was ordered executed and you were so discharged on 21 November 1973.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your contention that you would like your discharge upgraded. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given the serious nature of your misconduct for which you were convicted by GCM. Along these lines, the Board noted that you received considerable clemency when the sentence to confinement was reduced from 10 years to three years. Given all the circumstances of your case, the Board concluded your discharge was proper and no change is warranted. 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