



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

TJR
Docket No: 646-99
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 20 September 1973 at the age of 17. Your record reflects that you served for a year without disciplinary incident but on 5 October 1974 you were convicted by special court-martial (SPCM) of a five day period of unauthorized absence (UA) and possession of marijuana. You were sentenced to confinement at hard labor for 30 days, forfeitures totalling \$229, and reduction to paygrade E-1.

Your record also reflects that on 28 June 1975 you received nonjudicial punishment (NJP) for absence from your appointed place of duty. The punishment imposed was restriction and extra duty for 30 days and reduction to paygrade E-1. The reduction was suspended for four months. Shortly thereafter, on 7 July 1975, you received NJP for breaking restriction. The punishment imposed was forfeitures totalling \$75.

On 11 August 1975 you began a 185 day period of UA that was not terminated until 12 February 1976. On 18 March 1976 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA.

Your record shows that prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. 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. On 5 April 1976 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded. The Board further considered your contention that you were undergoing severe family stress and went UA to help with family matters while your father recovered from a heart attack. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the serious nature of your frequent misconduct and especially your request for discharge to avoid trial for the lengthy period of UA. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board 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. Given all the circumstances of your case the Board concluded your discharge was proper as issued 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