



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

TJR
Docket No: 1128-99
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 20 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 30 June 1972 at the age of 20. Your record reflects that on 10 October 1972 you received nonjudicial punishment (NJP) for conduct unbecoming a Marine. The punishment imposed was forfeitures totalling \$60. On 16 February 1973 you received NJP for absence from your appointed place of duty. The punishment imposed was forfeitures totalling \$75 and restriction for 10 days. On 26 April 1973 you were convicted by special court-martial (SPCM) of two periods of unauthorized absence (UA) totalling 22 days and breaking restriction. You were sentenced to confinement at hard labor for a month and forfeitures totalling \$200. On 15 August 1973 you were convicted by SPCM of a 24 day period of UA. You were sentenced to restriction for 14 days and forfeitures totalling \$75. On 27 August 1973 you received your third NJP for two incidents of breaking restriction. The punishment imposed was forfeitures totalling \$75.

Your record also reflects that during the period from 18 September to 27 November 1973 you were in a UA status on four occasions for a total of 38 days. On 4 January 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods 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 24 January 1973 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 did not receive effective representation. 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, which resulted in three NJPs and two court-martial convictions, and especially your request for discharge to avoid trial for multiple periods 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 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