



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 2186-00

25 August 2000

[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 15 August 2000. 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 25 June 1974 at the age of 17. Your record reflects that on 24 October 1974 you received nonjudicial punishment (NJP) for a three day period of unauthorized absence (UA) and were awarded restriction for 14 days.

Your record also reflects that on 22 January 1975 you received NJP for a 20 day period of UA. The punishment imposed was a \$200 forfeiture of pay. Shortly thereafter, on 14 February 1975, you began a 77 day period of UA that was not terminated until you were apprehended by civil authorities on 2 May 1975. While in this UA status you were declared a deserter. However, your record does not contain the disciplinary action taken for this misconduct.

Your record further reflects that on 3 May 1975 you began a 246 day period of UA that was not terminated until you were apprehended by U. S. Customs on 4 January 1976. You were also declared a deserter during this period of UA. On 15 March 1974 you submitted a written request for an undesirable discharge in

order to avoid trial by court-martial for this 246 day 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. Your request was subsequently granted and your commanding officer was directed to issue you an other than honorable 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 1974 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, good post service conduct, and your contention that you would like your discharge upgraded. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your frequent and lengthy periods of UA and your request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge 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 a clemency discharge was granted and should not be permitted to change your discharge 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