



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

ELP
Docket No. 2801-01
7 January 2002

[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 Navy Records, sitting in executive session, considered your application on 3 January 2002. 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.

The Board found that you enlisted in the Marine Corps on 3 February 1956 for four years at age 17. The record reflects that you served seven months without incident. However, during the 15 month period from September 1956 to December 1957, you received four nonjudicial punishments (NJP) for throwing a chair cushion at another Marine, wearing an improper uniform at inspection, and two periods of unauthorized absence (UA) totalling about eight days.

On 9 December 1957 you were apprehended by civil authorities on a charge of burglary. On 27 January 1958 you were convicted by civil authorities, in accordance with your plea, of second degree burglary. The record reflects that you were represented by a civilian attorney. Imposition of sentence was suspended for three years and you were placed on probation for that period, but you were confined during the first 60 days of probation and you were ordered to pay \$270 in restitution. The maximum sentence

for the crime of which you were convicted, under the California State Penal Code, was from 1 to 15 years in prison.

On 31 January 1958 the commanding officer recommended an undesirable discharge by reason of misconduct due to civil conviction. You were notified that you were being recommended for such a discharge and declined to submit a statement in your own behalf. On 17 February 1958 a board of officers was convened to consider the recommendation for discharge. The board recommended separation with an undesirable discharge due to your conviction by civil authorities. The discharge authority approved the board's recommendation and directed an undesirable discharge. You were so discharged on 4 March 1958.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, low test scores, need for veterans" medical benefits, and the fact that it has been nearly 46 years since you were discharged. The Board noted your contentions to the effect that you got mixed up with the wrong people, you did not know what was happening because you were drunk, the Navy lawyer gave you no assistance and did not offer to represent you in the matter, and you should receive the same clemency consideration that was afforded under the administrations of Presidents Ford and Carter. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four NJPs and the serious nature of the offense of which you were convicted by civil authorities. Concerning your contention that you received no assistance or representation by the Navy, the Board noted that Navy lawyers are prohibited from representing military personnel involved in civil criminal proceedings. Your contention regarding pardons and amnesty that were granted under the Ford and Carter administrations applied only to deserters and draft evaders during the Vietnam era from August 1964 to March 1973. Further, the pardons and clemency discharges that were issued at that time did not provide entitlement to veterans" benefits. Your need for such benefits does not provide a valid basis for recharacterizing service. The Board concluded that the 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

Copy to:
The American Legion