



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

ELP
Docket No. 3202-01
5 October 2001

[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 October 2001. 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 1 April 1971 for four years at age 21. The record reflects that on 20 March 1972 you requested and were granted an exemption in accordance with the Drug Exemption Program. However, you were removed from that program on 18 July 1972 and were advanced to LCPL (E-3).

The medical record reflects that you were admitted to a Naval hospital for infectious hepatitis. Further facts on this illness are not on file in your medical record.

The record reflects that you served without further incident until 30 January 1993 when you received nonjudicial punishment (NJP) for a six day period of unauthorized absence (UA). On 8 February 1983 you received a second NJP for being drunk on duty.

On 7 June 1973 you were reported UA again when you failed to comply with orders. You remained absent for nearly three years, until your surrender to military authorities on 19 April 1976.

On 11 May 1976 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 1057 day period of UA. 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. A staff judge advocate reviewed the request and found it to be sufficient in law and fact. On 21 May 1976 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 15 June 1976.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted your contentions to the effect that after doing a tour in Okinawa you contracted infectious hepatitis, were hospitalized, and three month's later received orders to go back to Okinawa. You went UA thinking that if you returned to Okinawa, you might catch hepatitis again. You claim that in April 1999 the hepatitis you got in Okinawa reappeared. However, the Board concluded that your contentions were insufficient to warrant recharacterization of your discharge given your record of two NJPs and the fact that you accepted discharge rather than face trial by court-martial for a period of UA of nearly three years. 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. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You should contact the Department of Veterans Affairs (DVA) to see if your hepatitis is service-connected. If such a determination is made, the DVA might provide you with treatment. However, this Board has no authority for matters that fall under the purview of another agency.

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