



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

ELP
Docket No. 3442-01
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 13 November 1974 for two years at age 18. The record reflects that you served for only four months without incident. During the three month period from March to June 1975 you received four nonjudicial punishments (NJP) for urinating on your mattress, breaking restriction, possession of marijuana, and disobedience of a lawful order.

On 26 September 1975 you requested an undesirable discharge for the good of the service in lieu of trial by court-martial for two periods of unauthorized absence (UA) totalling about 15 days, disrespect, insubordination, and destruction of government property. However, your request for discharge for the good of the service was denied.

On 5 November 1975 you were convicted by special court-martial of

two periods of UA; from 2-4 September and 7-19 September 1975; disrespect; and destruction of government property. You were sentenced to confinement at hard labor for three months, forfeitures of \$240 per month for three months, and a bad conduct discharge. On 19 December 1975 you waived the right to request restoration to duty and requested that the bad conduct discharge be executed. You were released from confinement on 29 December 1975 and placed on appellate leave. The Navy Board of Review affirmed the findings and the sentence on 9 April 1976. You received the bad conduct discharge on 18 June 1976.

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, letters of reference, and the fact that it has been more than 25 years since you were discharged. The Board noted your contentions to the effect that alcohol and drugs were a contributing factor for the misconduct which led to your discharge, you were never afforded rehabilitation treatment, you would not have received such a harsh discharge without rehabilitation under current standards, and that you have been sober for the past six years. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of four NJPS and a special court-martial conviction in only 19 months of service. The Board was aware that the availability of drug rehabilitation treatment was limited in 1975. However, the Board concluded that you were guilty of too misconduct in only 19 months of service to warrant clemency or recharacterization to honorable or under honorable conditions. The fact that you have made a good post-service adjustment is commendable but is insufficient to warrant recharacterization of your service. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Additionally, a Federal Bureau of Investigation report obtained by the Board shows that your post-service conduct has been marred by convictions of battery on a police officer, drunk driving, resisting arrest, fighting in a public place, a weapons offense, and giving a false identification to a police officer.

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