



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

ELP
Docket No. 3758-01
28 September 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 26 September 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.

You enlisted in the Marine Corps on 2 April 1980 for four years at age 24. The record reflects that you were advanced to LCPL (E-3) and served without incident until 31 August 1981, when you received nonjudicial punishment (NJP) for leaving your appointed place of duty without authority and dereliction of duty. Punishment imposed was a forfeiture of \$110 and 14 days of restriction.

Your medical record reflects that on 14 December 1981 you were admitted to the counseling and assistance center because of an alcohol problem. You stated that you started drinking at age 13 or 14 and began using marijuana at the same age. You claimed that you were currently smoking three or four joints a day and admitted to using cocaine on a small scale. You were placed on a regimen of antabuse. There is no evidence that this information was provided to your command.

On 6 August 1982, charges were preferred against you for three specifications of possession of cocaine and marijuana, three specifications of transferring cocaine and marijuana, and three specifications of selling cocaine and marijuana.

On 4 October 1982 you received a second NJP for two periods of unauthorized absence (UA) totaling about 37 hours. Punishment imposed was a reduction in rank to PFC (E-2).

On 14 September 1982 you submitted a request for a discharge under other than honorable conditions for the good of the service to escape trial by court-martial for the foregoing charges involving possession, transfer and sale of drugs. In your request, you stated that you were guilty of the offenses charged. 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 5 October 1982 the discharge authority approved the request and directed discharge under other than honorable conditions. You were so discharged on 28 October 1982.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your letter in support of your application, your good post-service conduct, and the fact that it has been nearly 19 years since you were discharged. The Board concluded that these factors 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 serious drug related offenses. 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. The Board thus 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
Disabled American Veterans