



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

TRG
Docket No: 4528-99
14 June 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 7 June 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 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 5 June 1978 at age 17. On 4 October 1979 you received nonjudicial punishment for an absence from your appointed place of duty and disobedience. On 23 January 1980 you completed an alcohol rehabilitation program.

On 19 February 1980 you were arrested by civil authorities on charges of aggravated assault and kidnapping. Apparently, you were subsequently convicted on both of these charges. However, it appears that you were only sentenced to five years probation. On 16 September 1980 you were released by civil authorities.

Based on your conviction by civil authorities, you were processed for an administrative discharge. In connection with this processing, you elected to waive your right to have your case heard by an administrative discharge board. On 16 October 1980 the discharge authority approved the recommendation of your commanding officer that you be discharged for misconduct with a discharge under other than honorable conditions. You were so discharged on 24 October 1980.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and the documentation you submitted showing that on 1 July 1985 the court dismissed the conviction and restored all of your civil rights. The only offense mentioned in the court order is the kidnapping offense. You state in your application that the record is in error because the aggravated assault charge was dropped. You contend, in effect, that discharge due to the civil conviction is unjust because the civil conviction has now been expunged. The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge given your conviction by civil authorities of serious offenses. There is no documentation in the record, and you have submitted none, showing that the aggravated assault charge was dropped. However, the Board believed that even if this were true, the remaining charge was sufficient to support your discharge. Your service record shows that you were convicted by civil authorities and the subsequent action of a state court to expunge the conviction does not change your military record. Along these lines, the Board noted that it does not appear that the expungement action was taken due to your innocence of the charge, but only as a matter of clemency. The Board concluded that the discharge was proper as issued 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