



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

TJR
Docket No: 4729-00
27 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 Naval Records, sitting in executive session, considered your application on 25 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 2 March 1972 at the age of 19. Your record reflects that on 12 December 1972 you received nonjudicial punishment (NJP) for a 15 day period of unauthorized absence (UA) and were awarded a \$70 forfeiture of pay and extra duty for 14 days.

Your record also reflects that during the period from 27 February to 11 May 1973 you received NJP on three more occasions for absence from your appointed place of duty and two periods of UA totalling 35 days. On 9 October 1973 you were convicted by special court-martial (SPCM) of an 84 day period of UA. You were sentenced to a \$100 forfeiture of pay, confinement at hard labor for 60 days, and restriction for 45 days. On 26 November 1973 you began a 112 day period of UA. On 2 May 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing period of UA. Your record shows that 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. On 30 May 1974 you received your fifth NJP for an eight day period of UA and disobedience. The punishment imposed was a \$70 forfeiture of pay. Subsequently,

your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 30 May 1974 you were issued an other than honorable discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that your record contains evidence which indicates that you received a bad discharge in error. The Board further considered your contentions that no consideration was given to your hardship problems, did not receive proper legal counsel, and your rights to due process were unprotected. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given the seriousness of your frequent misconduct, especially your lengthy periods of UA, and your request for discharge to avoid trial for this offense. 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. Finally, the Board noted that there is evidence in the record which shows that you received proper legal counsel and your right to due process was therefore protected. 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