



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

TJR
Docket No: 4933-01
27 December 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 19 December 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 3 December 1973 at the age of 18. At the time of enlistment you had completed 11 years of formal education and had a general classification test (GCT) score of 27, which placed you in Mental Group IV.

Your record reflects that on 11 November 1974 you received nonjudicial punishment (NJP) for dereliction in the performance of your duties and were awarded a \$50 forfeiture of pay.

Your record further reflects that on 19 May 1975 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for two periods of unauthorized absence (UA) totalling 18 days and disobedience. 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 29 May 1975 your commanding officer recommended your request be approved. The recommendation noted, in part, as follows:

During an interview conducted on 20 May 1975, (Member) reaffirmed his desire for an undesirable discharge.... his mother died recently (and) he thought the Marine Corps did not allow him to go home on leave enough while his mother was ill.... as a result, he had no desire to remain in the Marine Corps.... he was granted two individual periods of leave and was home when his mother passed away.... his past contribution to the Marine Corps has been minimal.... his future worth shows no signs of improvement.... recommended that his request for discharge be approved.

On 9 June 1971 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 13 June 1975 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, limited education, low test scores, and your contention that you should have received a hardship discharge because you had to take care of your mother and your siblings. However, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge given your misconduct, your relatively brief period of service, and your request for discharge to avoid trial for your repeated periods of UA. Along these lines, the Board also noted the commanding officer's letter of 39 May 1975, in which he stated that you had been granted leave in connection with your mother's death, and had been given a change to "back out" of your request for discharge, but declined to do so. 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.

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