



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

ELP
Docket No. 5600-01
8 August 2001

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 1 August 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 17 June 1969 for four years at age 17. The record reflects that you were advanced to PFC and served for 11 months without incident. However, during the six month period from May to November 1970, you received three nonjudicial punishments (NJP) and were convicted by a special court-martial. Your offenses consisted of four periods of unauthorized absence totalling about 54 days.

The record further reflects that on 9 December 1970 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for escaping from lawful confinement. 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. The SJA opined that the proceedings were sufficient in law and fact.

On 16 December 1970 the discharge authority approved your request and directed an undesirable discharge for the good of the

service. You were so discharged on 23 December 1970.

On 22 December 1977, by a vote of 3-2, the Naval Discharge Review Board (NDRB) recommended no change in your discharge. The majority's recommendation was approved by Assistant Secretary of the Navy on 3 February 1977.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, limited education, and the fact that it has been more than 30 years since you were discharged. The Board noted your contention that you were told in 1970 that your discharge would be changed to a general discharge after 12-18 months. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of three NJPs, a special court-martial conviction, and the fact that you accepted discharge rather than face trial by court-martial for escaping from confinement. The Board believed that considerable clemency was extended to you when the 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. Additionally, there are no provisions for upgrading a discharge simply due to the passage of time. The Board 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