



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

ELP
Docket No. 7383-99
23 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, 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 21 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 records provided for the Board were incomplete. However, available records reflect you enlisted in the Marine Corps on 15 March 1965 for four years at age 18. You served without incident until 4 April 1968 when you were reported in an unauthorized absence (UA) status.

The record reflects that on 25 April 1968, while you were UA, your mother sent a telegram to her congressman to the effect that you had returned from Vietnam in June 1967 after serving for 14 months, and that the Marine Corps was trying to send you back. She stated that you were willing to serve any place but Vietnam. She noted you were home waiting a reply.

On 4 May 1968, Headquarters, Marine Corps (HQMC) responded that overseas assignment policy provided that no individual who had served an unaccompanied overseas tour in the Western Pacific area/Vietnam since March 1965 would be reassigned to a subsequent tour in that area unless: (1) the individual had completed 24 months in the in the United States or in an accompanied overseas

billet, (2) the individual was a volunteer for another unaccompanied overseas tour in the Far East, or (3) a subsequent overseas assignment was specifically approved by the Commandant of the Marine Corps to meet a valid military requirement for an individual's service in the Western Pacific area. HQMC further stated that you had voluntarily waived your overseas control date on 26 March 1968 at Camp Lejeune. Therefore, orders were issued directing you to report to Camp Pendleton by 14 April 1968 for processing and further assignment to duty in the Western Pacific area.

The record reflects that you remained UA until you were apprehended by civil authorities on 16 December 1969. You were convicted on 20 January 1970 by special court-martial of the foregoing 613-day period of UA, from 4 April 1968 to 16 December 1969. You were sentenced to confinement at hard labor for five months, forfeitures of \$109 per month for five months, reduction in rank to PVT (E-1), and a bad conduct discharge. While in confinement, you told officials at the disciplinary command you went UA while on leave because the Marine Corps was sending you back to Vietnam with only ten months remaining on your enlistment. You also said that during your leave you got involved in race riots, and that after seeing how you and your people were being treated, you felt you could no longer fight for your country. Accordingly, you started attending college instead of returning to duty. In April 1970, you waived your right to request restoration to duty and requested that the adjudged discharge be executed. The Navy Court of Military Review affirmed the findings and the sentence on 28 May 1970. You received the bad conduct discharge on 3 February 1971.

On 6 September 1977, HQMC issued you a clemency discharge certificate and a DD Form 215 in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation No. 4314. Although the clemency discharge is less stigmatizing, it does not entitle an individual to any benefits denied by the original discharge, but does restore an individual's civil rights denied by a court-martial conviction and the bad conduct discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, Vietnam Service, clemency discharge, and the fact that it has been more than 29 years since you were discharged. The Board noted your contention that the discharge was inequitable due to the circumstances that happened to you while on leave from Vietnam. The Board concluded that the foregoing factors were insufficient to warrant recharacterization of your discharge given your special court-martial conviction of more than 20 months of UA. The Board noted the aggravating factor that the 20 months of UA were terminated only by your apprehension. Your

contention that you were on leave from Vietnam when you went UA appears to be without merit since your mother stated that you had returned in June 1967. The Board was well aware of the emotional impact of the 1968 riots, but neither the racial turmoil nor the orders returning you to the Western Pacific justified your prolonged period of UA. The record is clear that you made a choice not to return to duty, and you certainly should have known the consequences of this action. You have provided neither probative evidence nor a persuasive argument in support of your application. The Board concluded that you were guilty of too much UA to warrant recharacterization to honorable or under honorable conditions. 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