



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

JRE
Docket No: 7406-01
28 December 2001

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 13 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 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 13 March 1983. On 13 January 1987, your battery commander recommended that you be processed for separation by reason of misconduct, based on your record of four nonjudicial punishments, as well as charges which were pending against you at that time. Your battalion commander concurred with that recommendation in an endorsement dated 18 February 1987, and he noted that you had also been convicted by summary court-martial and received two letters of deficiencies, and that there had been a precipitous decline in your proficiency and conduct. You appeared before a medical board on 14 March 1987, and were diagnosed as suffering from a seizure disorder. Your case was referred to the Disability Evaluation System for action. On 21 April 1987, you were advised of your rights in connection with your proposed discharge by reason of misconduct, with a discharge under other than honorable conditions. In accordance with the provisions of the Disability Evaluation Manual then in effect, your disability evaluation should have been held in abeyance at that time pending completion of the administrative action. This was not done in your case. On 14 May 1987, you waived your right to have your case heard by an administrative discharge board, and submitted a statement in rebuttal

to the proposed discharge. On 18 May 1987, the Physical Evaluation Board made preliminary findings that you were unfit for duty because of the seizure disorder, which it rated at 40%. On 26 May 1987, the Staff Judge Advocate, 1st Marine Division, advised the discharge authority that your separation proceedings were sufficient in law and fact, and that he concurred with the recommendation that you be discharged under other than honorable conditions. The discharge authority approved the recommendation for discharge on 8 June 1987, and directed that you be discharged no later than 6 July 87. On 12 June 1987, the Physical Evaluation Board finalized your disability evaluation, and requested that the Commandant of the Marine Corps take appropriate action to place your name on the Temporary Disability Retired List (TDRL). On 16 June 1997, the Commandant of the Marine Corps, who apparently was not aware of your administrative discharge proceedings, directed that your name be placed on the Temporary Disability Retired List (TDRL) effective 2 July 1987. That action was held in abeyance because of your pending discharge by reason of misconduct, and ultimately cancelled by the Commandant of the Marine Corps and the President, Physical Evaluation Board.

The Board noted that a discharge by reason of misconduct generally takes precedence over and precludes disability separation or retirement. Although you were unfit by reason of physical disability at the time in question, you were separated by reason of misconduct before your proposed transfer to the TDRL was effected. In the absence of evidence which demonstrates that your discharge by reason of misconduct was erroneous or unjust, the Board was unable to recommend any corrective action in your case. 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