



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

TJR
Docket No: 8643-01
10 June 2002

[REDACTED]

[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 4 June 2002. 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.

You enlisted in the Marine Corps on 7 March 1974 at the age of 18. On 14 November 1974 you received nonjudicial punishment (NJP) for disobedience and disrespect. The punishment imposed was a suspended \$200 forfeiture of pay and restriction and extra duty for 30 days.

On 3 and 11 July 1975 you received NJP for a four day period of unauthorized absence (UA) and breaking restriction. On 22 March 1976 you received NJP for a 10 day period of UA. The punishment imposed was reduction to paygrade E-2 and correctional custody for 30 days, both of which were suspended for six months.

Your record reflects that on 6 May 1977 you were convicted by civil authorities of armed robbery and conspiracy to commit armed robbery. You were sentenced to confinement for five to seven years, less 169 days of pre-trial confinement. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to civil conviction. After consulting with legal counsel you elected to present your case to an administrative discharge board (ADB). On 6 October 1977 an ADB

recommended an other than honorable discharge by reason of misconduct due to civil conviction. On 21 October 1977 your legal counsel submitted a written request for retention in the Marine Corps to complete your enlistment, if probation was granted by civil authorities. However, this request was denied. On 28 October 1977 the discharge authority approved the recommendation of the ADB and directed discharge under other than honorable conditions. On 3 November 1977, while in civil custody, you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, and your contentions of drug and alcohol abuse, family problems, racism, and that you now suffer from post traumatic stress disorder (PTSD). It also considered your contention of double jeopardy in that your civil conviction should have been separate from your military service. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge given the serious nature of your misconduct in both the military and civilian communities. Further, the Board noted that there is no evidence in the record, and you submitted none, to support your contentions. Further, administrative processing for discharge due to civil conviction does not constitute double jeopardy. 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