



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

WMP
Docket No: 0130-01
15 October 2002

[Redacted]

[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 2 October 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. In addition, the Board considered the advisory opinion furnished by the Psychiatric Department, Naval Medical Center, Portsmouth, VA dated 1 May 2002, a copy of which is enclosed.

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 19 July 1965 for four years at age 17. At that time, you had completed 10 years of education and attained test scores which placed you in Mental Group III.

Your record reflects that on 28 February 1966 you requested a hardship discharge due to your father's heart condition. Your commanding officer recommended disapproval because your father's condition existed prior to your enlistment and there was no financial hardship. The Commandant of the Marine Corps (CMC) disapproved your request on 1 April 1966.

Your record further reflects that you served without incident until 9 March 1966, when you received nonjudicial punishment (NJP) for failure to be at your appointed place of duty and failure to obey a lawful order. The punishment imposed was 10 days of restriction and a forfeiture of \$10. On 12 April 1966 you received NJP for an unauthorized absence from 4 to 11 April 1966, a period of 7 days. The punishment imposed was a reduction to private, a forfeiture of \$25 and 30 days of restriction.

On 2 July 1966 you were convicted by a summary court-martial of two periods of unauthorized absence totaling 35 days, failure to obey stragglers orders and breaking restriction. You were sentenced to confinement at hard labor for 30 days and a forfeiture of \$60. Subsequently, the convening authority approved the findings and sentence but remitted the unexecuted portion of the sentence.

After numerous congressional inquiries prior to 8 July 1966, the battalion medical officer diagnosed you with a personality disorder. This diagnosis, however, was not considered to be disqualifying for duty.

On 4 December 1966 to you reported for a tour of duty in Vietnam. However, on 11 July 1967 you were transferred for medical treatment due to a hearing loss. The record is unclear as to whether this condition was due to hostile or non-hostile action.

On 9 April 1968 you were convicted by a special court-martial of six periods of unauthorized absence totaling 178 days. You were sentenced to confinement at hard labor for 6 months and a forfeiture of \$50 per month for six months, reduction to private, and a bad conduct discharge. On 10 April 1968 the convening authority approved the findings, but reduced the confinement and forfeitures to a period of four months.

On 11 April 1968, you were referred for a psychiatric evaluation due to your numerous periods of unauthorized absence, congressional investigations, personality problems, and multiple somatic complaints for which no basis could be found. You were diagnosed with a situational maladjustment. The examining psychiatrist found that you had many personal problems,

difficulties in getting along with people and resentment and anger towards the Marine Corps, but found you fit for duty and mentally competent. He found that you were free from any mental defect, disease, or derangement, were able to distinguish right from wrong, and possessed sufficient mental capacity to understand the nature of the legal proceedings against you.

On 5 June 1968, the Navy Board of Review affirmed the findings and the sentence of your special court-martial. On 14 June 1968, you waived your right to request restoration to duty and requested that the bad conduct discharge be executed. You further stated that, "I want out of the military service because I cannot adjust to military life." On 16 July 1968 you received a bad conduct discharge.

On 28 March 1969, the Naval Discharge Review Board (NDRB) considered your case and concluded that the original discharge was appropriately issued and was an accurate reflection of the character of your service. Your case was reviewed by this Board in 1979 and 1980, and no relief was granted. Since then several requests for reconsideration have been denied.

An advisory opinion of 1 May 2002 states, in part, as follows:

"...The service member was evaluated and treated at Naval Hospital Bethesda in July 1967 for unilateral hearing loss resulting from hostile action in Danang, Vietnam and was diagnosed with situational maladjustment.

"..The service member was evaluated and treated at Naval Hospital Portsmouth, New Hampshire in May 1968. At that time there was no evidence of neurosis or psychosis.

"..The petitioner is documented to have been evaluated by a civilian psychiatrist in 1979 upon referral from his lawyer in the context of a Social Security disability claim and was diagnosed with paranoid schizophrenia.

"..The petitioner is documented to have been evaluated and treated in October 1999 by a civilian psychiatrist and was diagnosed with Post-traumatic Stress Disorder, alcohol dependence, polysubstance abuse and a not otherwise specified personality disorder.

The advisory went on to state as follows:

"..There is insufficient documentation to support or reject the diagnosis of Post-traumatic Stress Disorder.

"..There is insufficient documentation to support or deny the petitioner's claim that Post-traumatic Stress Disorder was a significant factor in the misconduct that led to his discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your age and immaturity, limited formal education, low aptitude score, your Vietnam service, and your contention that you should have received a medical discharge because you were emotionally unstable due to post-traumatic stress disorder. The Board concluded that these factors were not sufficient to warrant recharacterization of your discharge given your nine periods of unauthorized absence totaling 205 days. Additionally, the Board carefully reviewed your medical documentation and the advisory opinion but noted that there is no evidence to show that you were not responsible for your actions or were not competent to stand trial for your misconduct. Furthermore, the Board concluded that you made a knowing and rational decision to become an unauthorized absentee and recharacterization of your discharge is not 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