



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

TJR
Docket No: 3716-02
20 November 2002

[REDACTED]

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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 19 November 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 reenlisted in the Marine Corps on 31 July 1972 after four years of prior honorable service. On 27 November 1972 you were convicted by summary court-martial (SCM) of a 38 day period of unauthorized absence (UA) and were sentenced to a \$210 forfeiture of pay, confinement at hard labor for a month, and reduction to paygrade E-1.

During the period from 2 January 1973 to 25 May 1974 you were in a UA status on two occasions. On 17 June 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA totalling 475 days. Prior to submitting such a request for discharge, 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. On 24 June 1974 your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of good of the service in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor, and on 26 June 1974 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service, service in Vietnam, and the contention that your ability to serve was impaired after a two year break in service during which time you were involved with drugs and alcohol and were arrested by civil authorities. It also considered your contention that you are still suffering physically and emotionally from your experiences in Vietnam. Nevertheless, the Board concluded these factors and contentions were not sufficient to warrant recharacterization of your discharge because of the seriousness of your repeated frequent and lengthy periods of UA, which also resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. 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