



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

TRG
Docket No: 4275-02
17 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 16 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.

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.

You enlisted in the Marine Corps on 21 March 1967 at age 17. On 27 February 1968 you were convicted by a special court-martial of three periods of unauthorized absence totaling about 79 days and breaking restriction. The court-martial sentence was substantially mitigated and you were restored to duty from confinement on 8 April 1968. You then served in Vietnam from 17 August 1968 until 26 March 1970 and were awarded the Combat Action Ribbon.

A second special court-martial convened on 23 October 1970 and convicted you of two periods of unauthorized absence totaling about 54 days. The sentence of the court included reduction in rate, forfeitures of pay and confinement at hard labor. You were restored to duty from confinement on 23 December 1970.

Subsequently, you were an unauthorized absentee from 25 January to 19 February 1971 and from 15 March to 8 April 1971. Your

military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for these two periods of unauthorized absence totaling about 51 days. Your record also shows that prior to submitting this request 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. The Board found that your request was granted on 21 May 1971 and, 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. You were discharged on 2 June 1971. On 17 August 1976 you were issued a clemency discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, service in Vietnam. The Board also considered your contention that you have been a good citizen for many years and that you were awarded an honorable discharge in the 1970's. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of unauthorized absences and especially your request for discharge to avoid trial for the offenses. The Board noted that you were issued a clemency discharge in the 1970's and not an honorable discharge as you contend.

The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is 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