



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

TRG
Docket No: 5390-01
22 March 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 19 March 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 Reserve on 28 April 1973 at age 19. The record shows that you satisfactorily completed initial training and were released from active duty on 26 October 1973. In December 1974 you were notified of unsatisfactory drill participation since December 1973, and were informed of the command's intent to order you to 18 months of involuntary active duty. Subsequently, you were issued orders to report for active duty on 1 May 1975. However, you never reported and were an unauthorized absentee from that date. You remained absent until you were apprehended on 25 January 1977.

Your military record shows that on 7 February 1977 you submitted a written request for a discharge under other than honorable conditions in order to avoid trial by court-martial for the foregoing unauthorized absences, totaling about 600 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 9 February 1977 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 9 February 1977.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, documentation concerning your educational improvement, and desire to participate in a veterans program. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your lengthy period of unauthorized absence and especially your request for discharge to avoid trial for the offense. 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