



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

CRS
Docket No: 5758-02
1 August 2003



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 30 July 2003. 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.

The Board found that you enlisted in the Marine Corps on 19 April 1966. The record reflects that you received two nonjudicial punishments for failure to obey a lawful order on three occasions. A psychiatric evaluation, conducted on 18 June 1968, diagnosed you with a situational lifelong maladjustment reaction with delayed combat stress symptoms. The psychiatrist found that you were fit for duty and able to distinguish right from wrong. Subsequently, you received four more nonjudicial punishments and were convicted by two special courts-martial. The offenses included unauthorized absences totalling 58 days, willful disobedience of a lawful order on two occasions, and squirting grease in the air.

On 28 October 1969 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for unauthorized absences totalling 33 days. 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.

Your request was granted 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 received the undesirable discharge on 26 November 1969.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, combat record in Vietnam, and the contention that you suffered from post traumatic stress disorder (PTSD). However, the Board found that these factors were not sufficient to warrant recharacterization of your discharge given your request for discharge to avoid trial for unauthorized absences totalling more than a month, and your prior record of extensive disciplinary infractions. 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 should not be permitted to change it now. In this regard, there is no evidence in the record, and you have submitted none, to show that you suffered from PTSD at the time of your service. Additionally, even if you did, and it became symptomatic during your period of active duty, there is no indication that the disorder caused an inability to know right from wrong or adhere to the right, or that it was sufficiently mitigating to warrant recharacterization. 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 PFHIFER
Executive Director

Copy to: The American Legion