



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

WMP

Docket No: 6568-02
26 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 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 20 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 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 27 November 1967 for four years at age 20. You served without incident until 29 October 1968, when you were convicted by a special court martial of unauthorized absence from 21 April to 23 August 1968, a period of 124 days. You were sentenced to confinement at hard labor for six months and forfeitures of \$73 per month for six months. On 11 December 1968, the convening authority approved the adjudged sentence but suspended the forfeitures. On 8 January 1969, the unserved portion of the confinement was suspended.

Your record further reflects that you served in Vietnam from 13 February to 21 May 1969 and participated in operations in Quang Tri Province. Your records further show that you were wounded in action on 26 February 1969. During this period of service

you were awarded the Vietnam Service Medal, Vietnamese Campaign Medal, Combat Action Ribbon, and the Purple Heart.

On 31 January 1970 you were convicted by a special court martial of unauthorized absence from 5 June to 5 October 1969, a period of 122 days. You were sentenced to confinement at hard labor for three months, forfeitures of \$50 per month for three months, and reduction to private. On 31 January 1970, the convening authority approved the adjudged sentence but suspended the confinement at hard labor for a period of six months.

Your record further reflects you were an unauthorized absentee from 5 March 1970 to 2 September 1970, a period of 181 days. On 21 October 1970 you submitted a request for an undesirable discharge for the good of the service in lieu of trial by court-martial for this period of unauthorized absence totaling 181 days. Prior to submitting this request you conferred with a qualified military lawyer and were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 18 November 1970 your request for discharge was approved by the discharge authority. As a result of such 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 25 November 1970.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, combat service, and your current medical condition. However, the Board found that notwithstanding your Vietnam service, your unauthorized absence of 181 days and your prior disciplinary record clearly warranted an undesirable discharge. The Board also 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 with the Marine Corps when your request for discharge was granted and you 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