



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

FC
Docket No: 07600-02
24 January 2003

[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 23 January 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 7 May 1968 at age 17. On 16 July 1973, you were convicted by special court-martial of unauthorized absence from 4 December 1970 through 8 January 1971, a period of thirty-five days; and breaking restriction. You were awarded confinement at hard labor for two months, reduction to paygrade E-2, and forfeitures of \$50.00 pay per month for two months.

On 23 March 1971, you commenced a second period of authorized absence that did not terminate until you were apprehended by civilian authorities and returned to military authorities on 6 May 1971. Your record reflects that on 26 May 1971 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for this 44-day period of absence. Prior to submitting your 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 your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the potential penalties of a punitive discharge and confinement at hard labor. On 10 June 1971, you were issued an undesirable discharge.

In its review of your case, The Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, Vietnam service, and the length of time that has passed since you were discharged. However, the Board found that these factors and contentions were not sufficient to warrant recharacterization given your request to for discharge to avoid trial by court-martial for an unauthorized absence of more than a month. The Board believed that considerable clemency was granted 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. 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