



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

WMP

Docket No: 10104-02  
22 May 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 21 May 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 30 January 1974 for four years at age 17. You served without incident until 30 June 1975, when you received nonjudicial punishment (NJP) for violating a written order. The punishment imposed was a forfeiture of \$25.

On 22 September 1975 you commenced a 107 day period of unauthorized absence, which was terminated on 8 January 1976 when you were apprehended by civil authorities.

On 29 January 1976, you submitted a request for an undesirable discharge in lieu of trial by court-martial for the 107 day period of unauthorized absence. 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 13 February 1976 the discharge authority approved your request for discharge. 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 20 February 1976.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and your contention that you had family problems. However, the Board found that your unauthorized absence of 107 days and prior NJP clearly warranted an undesirable discharge. Your contention that you had family problems cannot excuse such serious misconduct. Clearly considerable clemency was extended to you when the 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