



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

TJR
Docket No: 10366-02
15 September 2003



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 9 September 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 7 May 1974 at age 18. You served without disciplinary incident until 21 October 1975, when you received nonjudicial punishment (NJP) for drunk and disorderly conduct. The punishment imposed was a \$90 forfeiture of pay and correctional custody for seven days, which was suspended for six months.

On 2 February 1976 you began a 99 period day of unauthorized absence (UA) that did not terminate until 10 May 1976, when you were apprehended by civil authorities and charged with failure to maintain car insurance, possession of an improper registration, and improper driving. Two days later, on 12 May 1976, you began yet another period of UA. During this period of UA, on 23 August 1976, you were convicted by civil authorities of failure to maintain car insurance and were sentenced to confinement for 30 days. On 18 October 1976 you were convicted by civil authorities of possession of an improper registration and improper driving.

You were sentenced to confinement for four months. On 1 December 1976 you were again apprehended by civil authorities which terminated this second period of UA.

During the period from 12 to 19 January 1977 you were again in a UA status for eight days. On 1 February 1977, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the first two periods of UA totalling 303 days. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. On 11 February 1977 your request for discharge was granted and on 7 May 1977 you received an other than honorable discharge in lieu of trial by court-martial. 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.

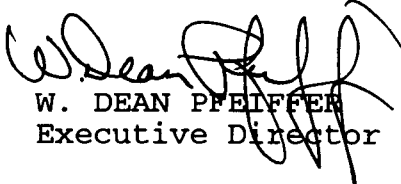
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity, post service conduct, and character reference letters. It also considered your contention that you went UA because your request for leave was denied. Nevertheless, the Board concluded these factors and contention were not sufficient to warrant recharacterization of your discharge because of your frequent misconduct and especially the repetitive and lengthy periods of UA which resulted in your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board also concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and should not be permitted to change it now. Finally, the Board noted that there is no evidence in the record, and you submitted none, to support your contention that you were denied leave. Even if you were, such action would not justify or sufficiently mitigate such lengthy periods of UA. 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