



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

TJR
Docket No: 10978-02
15 October 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 7 October 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 1 December 1975 at age 21. You served without disciplinary incident until 27 December 1976, when you received nonjudicial punishment (NJP) for absence from your appointed place of duty and misbehavior as a sentinel. The punishment imposed was a \$75 forfeiture of pay and restriction and extra duty for 14 days.

On 20 May 1977 you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for two specifications of disrespect, four specifications of disobedience, absence from your appointed place of duty, and theft of government property. 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. Your request also stated, in part, as follows:

I am aware of the loss of benefits with this type of discharge and my prerogative to attempt to upgrade it through the VA in the future, however unlikely it actually may be. My problems would only continue should I stay in and only make things worse for all parties concerned. This UD will greatly affect my chances of obtaining a good job right away, but my relationship with other people is more valuable to me at this time. My only regrets in leaving the Marine Corps are that I could not be of any better service. I understand that if a bad conduct discharge is awarded it could be suspended. I do not want to attempt to get an honorable or general discharge. I have explained to my attorney, and I fully understand the various veterans benefits I may be deprived of, should I be discharged under conditions other than honorable. Knowing and understanding this, I still desire to be discharged under conditions other than honorable.

Subsequently, your request for discharge was granted and on 16 June 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.

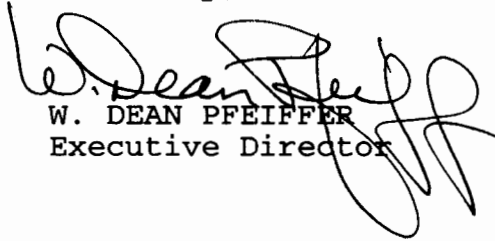
The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and immaturity and your assertion that you were told that your discharge would be automatically upgraded six months after your separation. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of your frequent misconduct which resulted in NJP and 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, no discharge is automatically upgraded due to the passage of time. 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