



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

WMP

Docket No: 3444-02

5 September 2002



Dear [REDACTED]

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 4 September 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 3 March 1978 for four years at age 17. Your record reflects that you served without incident until 7 January 1980, when you received nonjudicial punishment (NJP) for eight day period of unauthorized absence. The punishment imposed was a forfeiture of \$125 and 14 days of restriction.

Your record further shows that on 13 May 1980, you received NJP for destruction of private property and failure to be at your appointed place of duty. The punishment imposed was a forfeiture of \$500. 14 days of restriction was also imposed, however, its execution was suspended for a period of six months.

On 18 June 1980, the previously suspended punishment from your NJP of 13 May 1980 was vacated due to your continued misconduct,

and you again received NJP for another eight day period of unauthorized absence and missing ship's movement. The punishment imposed was a reduction to paygrade E-2, a forfeiture of \$100, and 30 days of restriction.

On 20 August 1980, you failed to execute your orders to 1st Marine Division and remained absent until apprehended by civil authorities on 9 April 1982. On 19 April 1982, you were returned to military control.

Although your request for an other than honorable discharge in lieu of trial by court-martial for the foregoing 535 day period of unauthorized absence is not in the record, it is clear from available documentation that you submitted such a request. Prior to submitting this request, you would have conferred with a qualified military lawyer and been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 22 April 1982 your request for an other than honorable discharge for the good of the service to escape a trial by court-martial 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 other than honorable discharge on 26 April 1982.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and your contention that your discharge was inequitable because it was based on only one isolated incident. However, the Board concluded that the other than honorable discharge was appropriate given your three periods of unauthorized absence totaling 551 days, the fact that the last period of absence was terminated only by your apprehension by civil authorities, and your request for discharge to avoid trial by court-martial. The Board 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