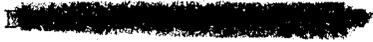




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7943-08
8 May 2009



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 7 May 2009. 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 and health records, 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 entered active duty in the Marine Corps on 12 November 1973. On 5 May 1976, you consulted with a qualified military counsel and requested an other than honorable (OTH) discharge for the good of the service (GOS) to avoid trial by court-martial for five specifications of unauthorized absence (UA) totaling approximately 636 days. Your record also includes 66 days of UA for which no disciplinary action was taken. 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.

Your GOS request was approved, and on 15 July 1976, you received the OTH discharge for the GOS to avoid trial by court-martial, and were assigned an RE-4 reenlistment code.

The Board, in its review of your entire record, carefully considered all potential mitigation, such as your desire for veterans' benefits. However, the Board concluded that this factor was not sufficient to warrant recharacterizing your OTH discharge because of your commission of very serious misconduct. You are advised that no discharge is automatically upgraded after the passage of time. Furthermore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. The Board also 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. In view of the above, 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