



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

REC
Docket No: 03779-10
20 January 2011

[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 20 January 2011. 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.

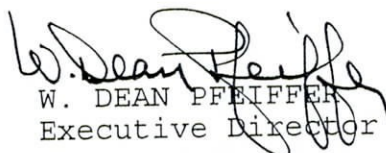
You enlisted in the Marine Corps and began a period of active duty on 31 March 1972. On 17 November 1972, you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty. On 23 March 1973, you were convicted by a summary court-martial (SCM) of assaulting a fellow Marine. You were sentenced to forfeitures of \$150, reduction in pay grade, and confinement at hard labor for 30 days. On 15 April 1973, you received NJP for disobeying a lawful order. On 1 August 1973, you received NJP for failure to obey a written lawful order, and two incidents of failure to go to your appointed place of duty. On 8 September 1973, you submitted a request for a good of the service discharge to avoid trial by court-martial for being absent from your appointed place of duty, and three incidents of disobeying a lawful order. 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. While waiting for a response to your request, your misconduct continued and on 17 September 1973, you received your fourth NJP for breaking restriction, two incidents of being UA totaling nine days, and

two incidents of being absent from your appointed place of duty. Your commanding officer forwarded his recommendation that you be discharged under other than honorable conditions by reason of misconduct. Your request for discharge was granted and on 29 October 1973, you received an other than honorable discharge for the good of the service 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. At that time you were assigned an RE-4 reenlistment code.

The Board, in its review of your application, carefully weighed all potentially mitigating factors, such as your youth, conduct and performance, and overall record of service. Nevertheless, the Board found that these factors were not sufficient to warrant changing the reason or characterization of your discharge, given your record of misconduct, and the fact that you were counseled and warned of the consequences of further misconduct. 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. 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