



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

TJR
Docket No: 10229-10
8 July 2011

[REDACTED]

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 6 July 2011. The names and votes of the members of the panel will be furnished upon request. 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 reenlisted in the Marine Corps on 25 February 1975 after nearly two years and eight months of prior honorable service. You continued to serve for about nine months without disciplinary incident. However, on 4 November 1976, you received nonjudicial punishment (NJP) for absence from your appointed place of duty. About three months later, on 8 February 1977, you were convicted by special court-martial (SPCM) of wrongful possession of a loaded pistol in a privately owned vehicle and wrongfully transporting a loaded pistol.


During the period from 22 July 1977 to 30 March 1978 you committed the offenses of disobedience, two specifications of disrespect, assault, dereliction of duty, communicating a threat, and were in an unauthorized absence (UA) status for 235 days. Although you were declared a deserter during your period of UA, only the charge of UA was referred for trial along with the other aforementioned misconduct. Subsequently, on 11 April 1978, you submitted a written request for an other than honorable discharge in order to avoid trial by court-martial for the foregoing

misconduct. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and the commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. 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. On 24 April 1978 you were issued an other than honorable discharge.

The Board, in its review of your entire record and application carefully weighed all potentially mitigating factors, such as your prior period of satisfactory service, post service conduct, and desire to upgrade your discharge. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct which resulted in an NJP, SPCM, and your request for discharge. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved. 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.

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