



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

BAN
Docket No: 11991-10
15 August 2011

[REDACTED]

[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 10 August 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 on 4 April 1967, and during the next three years, you received two nonjudicial punishments, and two special courts-martial. Your offenses included unauthorized absences, failure to obey lawful orders in a combat zone, and disrespect. You were then notified that your commanding officer was recommending you for an administrative separation with an undesirable discharge (UD) due to misconduct. You elected to have your case heard by an administrative discharge board, which met and found you committed misconduct, and recommended a UD.

Shortly thereafter, on 14 July 1970, you were separated. You received a UD and an RE-4 reenlistment code due to misconduct.

In April 1977, you appealed to the Department of Defense, Special Discharge Review Program due to Public Law 95-126, which revised standards for those who received less than honorable discharges for service during the Vietnam era.¹ As a result of this program,

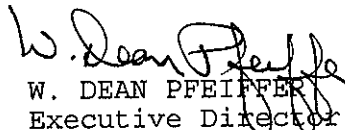
¹ On 16 September 1974, President Ford issued Proclamation 4313 and Executive Order 11803 establishing a clemency program covering four categories of persons: fugitives, both draft offenders and military

discharges were upgraded to general or honorable characterization on a case by case basis, in the spirit of forgiveness and compassion. On 11 July 1977, your case was approved and upgraded to a general discharge. However, regardless of the type or characterization of discharge, the Department of Veterans Affairs has the right to deny benefits based on Title 10, United States Code Sections 1553 and 3103(a)². Persons whose discharges fall into the statutory bars of section 3103 would not be considered eligible for veteran entitlements.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and Vietnam combat service. Nevertheless, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge because of the seriousness of your misconduct. 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

absence offenders, convicted draft offenders and former service personnel with undesirable or bad conduct discharges for unauthorized absences. Only individuals who had committed a selective service law or military offense between 4 August 1964 and 28 March 1973, were eligible.

² Section 3103(a) consists of bars to benefits, to include: discharge or dismissal by reason of the sentence of a general court martial, discharge as a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authority, discharge as a deserter, discharge or dismissal of an individual during any period of hostilities as an alien, or in the case of an officer, the dismissal by resignation for the good of the service.