



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD SUITE 1001  
ARLINGTON VA 22204-2490

BAN  
Docket No: 13157-11  
3 October 2012

[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 29 August 2012. 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 entered active duty service in the Marine Corps on 15 January 1973, and served without disciplinary incident until 18 May 1973, when you received nonjudicial punishment (NJP) for unauthorized absence (UA), and sleeping on post. Shortly thereafter, you received the following NJP's: on 9 August 1973, for UA and willful disobedience; on 13 December 1973, for failure to obey a lawful order; on 17 January 1974, for UA; on 22 February 1974, for failure to obey a lawful order; on 21 March 1974, for UA; on 22 July 1974, for failure to obey a lawful order; on 20 January 1975, for UA; and on 17 April 1975, for failure to obey a lawful order. On 3 October 1974, you were convicted at a special court-martial of UA. In addition, on 18 March 1975, you were convicted at another SPCM of UA, failure to obey a lawful order; and failure to obey a written order. Finally, you were pending another SPCM for six specifications of UA, failure to obey a lawful order; and assault. However, while you were awaiting

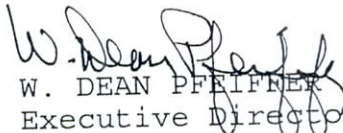
court-martial, you requested, through counsel, to be separated with an other than honorable (OTH) characterization of service to escape trial by court-martial. At that time, you acknowledged the consequences of such a discharge. Your request was granted and on 3 February 1976, you were separated with an OTH discharge and an RE-4 reenlistment code, 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.

The Board, in its review of his entire record and application, carefully weighed all potentially mitigating factors, such as your youth. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge because of your serious misconduct and 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. 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 his 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