



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 7938-98

7 May 1999

[REDACTED]

Dear [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 4 May 1999. 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.

The Board found you enlisted in the Marine Corps on 21 November 1965 at the age of 20. Your record shows that on 18 January 1966 you received nonjudicial punishment (NJP) for possession of an unclean rifle. The punishment imposed was forfeitures totalling \$10. On 23 February 1966 you received NJP for failure to obey a lawful order. The punishment imposed was restriction and extra duty for seven days. Approximately two years later, on 13 February 1968, you received NJP for absence from your appointed place of duty. The punishment imposed was a reprimand. Shortly thereafter, on 10 April 1968, you received your fourth NJP for possession of marijuana and a 21 day period of unauthorized absence (UA). The punishment imposed was restriction for 45 days, reduction to paygrade E-1, and forfeitures totalling \$150.

Your record further shows that during the period from 26 August 1968 to 27 January 1970 you were in a UA status on five occasions for a total of 442 days. On 27 February 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for the foregoing periods of UA. Your record shows that 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, on 9 April 1970, your request was granted and your commanding officer was directed to issue you an undesirable 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 17 April 1970 you were issued an other than honorable discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity, and your contention that you would like your discharge upgraded. The Board further considered your contention that you could not adapt to military life after leaving Vietnam and that you were "not all together" when you accepted the offer of an undesirable discharge. However, the Board concluded these factors were not sufficient to warrant recharacterization of your discharge given your frequent misconduct, especially your lengthy periods of UA, and your request for discharge to avoid trial for these offenses. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board 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. Given all the circumstances of your case the Board concluded your discharge was proper as issued and no change is warranted. 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