



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 1584-99

16 July 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 14 July 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 that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 4 January 1963 for four years at age 20. The record reflects that you were advanced to PFC (E-2) and served without incident until 28 October 1963 when you were referred for a psychiatric evaluation because you said it was against your principles to carry a weapon. The examining psychiatrist considered you mentally competent and able to distinguish right from wrong, but diagnosed a schizoid personality disorder and suggested that administrative separation be considered.

On 9 July 1963, the Director, Naval Security Group (NAVSECGRU) notified the Commandant of the Marine Corps that the results of a partial background investigation found that you did not meet the standards for access to NAVSECGRU material, and your security clearance was terminated.

On 17 January 1964, Commandant of the Marine Corps advised your commanding officer that it had received information that you had been arrested in November 1958 on two counts of grand larceny. Your enlistment documents failed to disclose any arrests or convictions.

On 25 February 1964, the commanding officer (CO) submitted a report of misconduct to the discharge authority recommending that you be separated with an undesirable discharge by reason of fraudulent enlistment due to concealment of a police record and civil conviction, and refusal to accept a weapon. However, the report of misconduct and recommendation were returned stating that the case would not be considered until pending disciplinary action was completed.

A special court-martial was convened on 3 April 1964 and you were convicted of disobedience of a lawful order to draw a rifle. You were sentenced to confinement at hard labor for two months, reduction in rank to PVT (E-1), and forfeitures of \$50 pay per month for two months.

On 27 April 1964, the commanding officer (CO) resubmitted the report of misconduct recommending an undesirable discharge by reason of fraudulent enlistment. On the same day, you were notified of the CO's intent to recommend you for discharge by reason of misconduct due to fraudulent enlistment. You were advised of your rights and elected to present your case to a board of officers.

You appeared before a board of officers on 25 May 1964. After a long a discussion with your probation officer, the board found there was no intent on your part to defraud the government because the probation officer advised all juveniles on probation not to reveal their juvenile records when applying for employment. The board noted that you were left with the impression that this advice also applied to an enlistee such as yourself. The board recommended retention, but also recommended that you be processed for separation as a "conscientious objector" given your strong objection to bearing arms. The discharge authority approved the recommendation for retention on 19 June 1964. The record reflects that you were subsequently counseled and decided to draw, maintain and train with a weapon. There is no evidence that you ever applied for "conscientious objector" status, or that the command ever considered processing you for discharge for this reason.

You continued to serve without further incident until 16 August 1964, when you were reported in an unauthorized absence (UA) status. You remained absent until you surrendered to civil authorities on 19 January 1968, a period of about 1251 days.

On 4 February 1968 you wrote to your senator requesting assistance. In that letter you explained that after your special court-martial, you were ordered to accept a weapon and complied because you did not want to be punished again. However, you went UA shortly thereafter. You told the senator that you were not a pacifist or a true conscientious objector, but could not kill another human being, and believed you had a right to your convictions.

While awaiting disciplinary action on the foregoing UA, you were referred for further psychiatric evaluation, and the diagnosis remained unchanged. The examining psychiatrist noted that during your prolonged UA you obtained successful employment; married and became a father; and engaged in psychotherapy, presumably because of identity problems. He further noted that the October 1963 recommendation for administrative separation had not been acted upon. He opined that that schizoid personality disorder did not impair your ability to distinguish right from wrong, or adhere to the right. You were considered able to cooperate in your own defense.

On 5 April 1968, you were convicted by general court-martial of the foregoing 1,251 day period of UA. You were sentenced to confinement at hard labor for seven months, total forfeitures, and a bad conduct discharge. Your defense counsel submitted a number of statements in mitigation and extenuation at the court-martial from individuals in the civilian community. Your brother, an active duty Marine Corps officer, stated that you had a daughter with a congenital hip defect requiring her to wear a brace and was facing with possible surgery. Your defense counsel requested clemency because your wife and daughter were in serious debt and were threatened with foreclosure action unless mortgage arrears were paid, and your wife suffered from a congenital defect which severely limited her ability to seek gainful employment.

The Navy Board of Review affirmed the findings and the sentence on 13 June 1968. You waived your right to request restoration to duty on 16 August 1968 and requested that the bad conduct discharge be executed. That portion of the sentence providing for confinement at hard labor and forfeitures was remitted on 17 September 1968 and you were placed on appellate leave. The Court of Military Appeals denied review on 4 October 1968. You received the bad conduct discharge on 15 October 1968.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted that you were a high school graduate with above average

intelligence and, at age 20, you were older than the average recruit. You possessed all the necessary qualifications for successfully completing your enlistment. The Board noted your contentions to the effect that you made an immature mistake some 30 years ago and that your superiors refused to act on professional advice that your military occupational specialty be changed or you be discharged as a conscientious objector. The Board was well aware that a discharge board had recommended you for separation as a conscientious objector, but the record indicates that after the discharge board and your special court-martial conviction you agreed to draw, maintain and train with an individual weapon. Based upon your agreement, there was no longer any basis for processing you for discharge, unless you applied for conscientious objector status. Trial by general court-martial was warranted by the gravity of the offense charged. The conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. While the Board was sympathetic to the fact that both your wife and daughter suffer from congenital defects, it was not persuaded that these defects justified or sufficiently mitigated a UA of more than three years, or prevented you from returning to military jurisdiction earlier than you did. The Board concluded that you were guilty of too much UA, the discharge was proper, and no clemency 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