



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2552-99

3 September 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 1 September 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 24 January 1977 for four years at age 20. The record reflects that you were married at the time of your enlistment. You were advanced to LCPL (E-3) on 1 June 1977.

Documentation you provided in support of your application shows that on 19 October 1978 your wife was granted a divorce and was awarded custody of your two minor children, a daughter and son. The record reflects that on 15 December 1978, you were reported in an unauthorized absence (UA) status, and you remained absent until your surrendered to military authorities on 30 October 1979.

On 19 November 1979 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for the foregoing 319 day period of UA. 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. In a separate statement, you said that you did not want to return to duty and would request a bad conduct discharge if referred to trial. You asserted that the reason you did not want to return to duty was because you "could not handle all of the unnecessary hassle of military life." You stated that you would rather be home where you could make a better living for your children. On 7 December 1979, the discharge authority approved the request and you were discharged under other than honorable conditions on 14 December 1979.

In its review of your application, the Board carefully weighed all potentially mitigating factors such as your limited education, the 23 months of unblemished service prior to your UA, and the fact that it has been nearly 20 years since you were discharged. The Board noted the documentation submitted in support of your application, which includes a statement from your current wife, the divorce decree, and court documents concerning the recent adoption of a son. The Board also noted your contentions that you went UA because you were having marital problems, your wife left with your daughter and returned home to her parents, her parents would not allow you to see your wife or daughter, and that during your period of UA you tried to get your family back. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given the fact that you accepted discharge rather than face trial by court-martial for the prolonged period of UA of more than 10 months. While the Board is always sympathetic to individuals with family problems, the Board was not convinced that the circumstances justified such an extensive period of UA or prevented you from returning to military jurisdiction earlier than you did. Further, the Board noted that in the statement you made in conjunction with the request for discharge, you did not mention your divorce or any marital problems. Your recent adoption is commendable but does not provide a valid basis for recharacterizing your service. 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 you should not be permitted to change it now. Given all the circumstances of your case, the Board concluded your discharge was proper 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

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The American Legion